

# Travis County Disparity Study 2021





# TRAVIS COUNTY, TEXAS

## DISPARITY STUDY

# 2021

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## About the Study Team

**Colette Holt & Associates** (“CHA”) is a national law and consulting firm specializing in issues related to Minority, Women and Disadvantaged Business Enterprise programs, business diversity initiatives, and affirmative action issues. The firm has conducted court-approved disparity studies and designed court-approved programs for over 30 years, including for numerous governments. CHA also provides training, monitoring and investigative services across the country to agencies and businesses. CHA is led by Colette Holt, J.D., the founding principal of Colette Holt & Associates and a nationally recognized attorney and expert. Ms. Holt is also a frequent expert witness, and a media author, on these issues. In addition to Ms. Holt, the firm consists of Steven C. Pitts, Ph. D., who serves as the team’s economist and statistician; Ilene Grossman, B.S., Project Administrator; Glenn Sullivan, B.S., Director of Technology; Victoria Farrell, MBA, Director Qualitative Data Collection; and Joanne Lubart, J.D., Associate Counsel.

**Cultural Strategies, Inc.** (“CS”), headed by President Sebastian Puente and located in Austin, is a certified HUB focusing on important civic projects and education campaigns for local institutions and private enterprises. Founded in 2009, CS provides effective community engagement strategies for an ever more multicultural Central Texas. With rich experience in multicultural and multilingual marketing, advertising, outreach, and communications, CS helps build effective communications and outreach strategies for respected institutions in a variety of industries such as local government, public services, health care, education, nonprofits and private businesses.

**Beverly Silas & Associates** is a public affairs/public involvement firm, founded in 2007, and located in Austin, TX. The firm is a certified DBE. Ms. Silas and her team combine expertise in interpersonal communication with superior public outreach skills and experience. They work with clients to identify needs, develop and execute a communications strategy, and support the decision-making process.

## Acknowledgments

We wish to express special appreciation to the entire Commissioners Court, Purchasing Board, Bonnie Floyd, Sylvia Lopez, C.W. Bruner, and other Purchasing Office staff for their assistance in conducting this Study.



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# I. EXECUTIVE SUMMARY

Colette Holt & Associates (“CHA”) was retained by Travis County (“County”) to perform a disparity study examining its Historically Underutilized Business (“HUB”) Program. In this Study, we determined Travis County’s utilization of HUBs during fiscal years 2014 through 2019; the availability of these firms as a percentage of all firms in the County’s geographic and industry market areas; and any disparities between Travis County’s utilization of HUBs and HUB availability. We further analyzed disparities in the Austin Metropolitan Area and the wider Texas economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. We also gathered qualitative data about the experiences of minority- and woman-owned firms in obtaining Travis County contracts and the associated subcontracts. Based on these findings, we evaluated the HUB program for conformance with constitutional standards, national best practices, and minority- and woman-owned business enterprises (“M/WBE”) program regulations.

The methodology for this Study embodies the constitutional principles of *City of Richmond v. Croson*, Fifth Circuit Court of Appeals case law and best practices for designing race- and gender-conscious and small business contracting programs. The CHA approach has been specifically upheld by the federal courts. It is also the approach developed by Ms. Holt for the National Academy of Sciences that is now the recommended standard for designing legally defensible disparity studies.

## A. Summary of Strict Constitutional Standards Applicable to Travis County’s Historically Underutilized Business Program

To be effective, enforceable, and legally defensible, a race-based program for public sector contracts must meet the judicial test of constitutional “strict scrutiny”. Strict scrutiny is the highest level of judicial review. Travis County must meet this test to ensure any race- and gender-conscious program is in legal compliance.

Strict scrutiny analysis has two prongs:

1. The government must establish its “compelling interest” in remediating race discrimination by current “strong evidence” of the persistence of discrimination. Such evidence may consist of the entity’s “passive participation” in a system of racial exclusion.

Any remedies adopted must be “narrowly tailored” to that discrimination; the program must be directed at the types and depth of discrimination identified.<sup>1</sup>

The compelling governmental interest prong has been met through two types of proof:

1. Statistical evidence of the underutilization of minority- or woman-owned firms by the agency and/or throughout the agency’s geographic and industry market area compared to their availability in the market area.
2. Anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority and woman firms in the market area and seeking contracts with the agency. Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

The narrow tailoring prong has been met by satisfying five factors to ensure that the remedy “fits” the evidence:

1. The necessity of relief;
2. The efficacy of race-neutral remedies at overcoming identified discrimination;
3. The flexibility and duration of the relief, including the availability of waiver provisions;
4. The relationship of numerical goals to the relevant market; and
5. The impact of the relief on the rights of third parties.

Most federal courts, including the Fifth Circuit, have subjected preferences for Woman-Owned Business Enterprises to “intermediate scrutiny”. Gender-based classifications must be supported by an “exceedingly persuasive justification” and be “substantially related to the objective”.<sup>2</sup> The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program or held that the results would be the same under strict scrutiny.

Proof of the negative effects of economic factors on M/WBEs and the unequal treatment of such firms by actors critical to their success will meet strict scrutiny. Studies have been conducted to gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and woman-owned firms and their actual utilization compared to White male-

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1. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

2. *Cf. United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).

owned businesses. Specific evidence of discrimination or its absence may be direct or circumstantial and should include economic factors and opportunities in the private sector affecting the success of M/WBEs. High quality studies also examine the elements of the agency's program to determine whether it is sufficiently narrowly tailored.

## **B. Travis County's Historically Underutilized Business Program**

Travis County was the first Texas county to adopt a HUB program in 1994. The County is committed to ensuring M/WBEs have full and fair access to compete for County contracts for construction, professional and consulting services, services and commodities. From 2017 to 2020, the County implemented changes to strengthen the program based on the results of a 2016 Disparity Study that found statistical evidence of business discrimination against M/WBEs. In 2019, the program's policies were revised and approved by the Commissioners Court. In 2020, the County's Purchasing Rules were amended. The Commissioners Court has the authority to reauthorize the program according to the sunset provisions that have been established in the County's Purchasing Procedures Guide.

The HUB program provisions in the County Purchasing Rules describe the program's objectives, the annual aspirational goals by business category and the contracts exempt from program goal setting.

### **1. Program Administration**

The HUB program is administered by the County's Purchasing Office. Program requirements are specified in the Purchasing Office's 2021 Purchasing Procedures Guide. The HUB program is managed by two dedicated HUB staff members, the HUB Program Director and HUB Program Coordinator, and is supported by a procurement team and compliance staff from the Purchasing Office. The HUB Director reports directly to the County Purchasing Agent. Roles and responsibilities of the HUB program staff and supporting staff are outlined in the Purchasing Procedures Guide.

Since 2006, the County has used B2Gnow, a web-based contract tracking and data collection system. The Vendor Tracking System ("VTS") provides the ability to monitor changes in subcontractors, report payments and evaluate the HUB program.

## **2. HUB Program Eligibility**

The County is a non-certifying entity. The County accepts HUB and M/WBE certifications by the State of Texas, the City of Austin, the Texas Unified Certification Program of the DBE program and the South Central Texas Regional Certification Agency. To meet the criteria for certification, a HUB must not exceed the size standards set by the Texas Administrative Code<sup>3</sup>; have its principal place of business in Texas; be at least 51% owned by “an Asian-Pacific American, an African-American, a Hispanic-American, a Native-American, an American woman and/or a Service-Disabled Veteran”, who resides in Texas and actively participates in the control, operations, and management of the business<sup>4</sup>.

## **3. Goal Setting Policies and Procedures**

The County has adopted annual aspirational goals by business category that are based on the availability of ready, willing, and able HUBs as determined by the 2016 Disparity Study. The overall, aggregated aspirational goal is 24.12% of eligible County spending.

Contracts with an estimated value of over \$1M are reviewed for opportunities for HUB participation. HUB staff set race and gender specific contract goals based on subcontracting opportunities in the project scope; the dollar value of the opportunities; the availability of at least three HUBs in the project scope; availability estimates provided by the 2016 Disparity Study; levels of past utilization on County contracts; and any other relevant factors. On projects with fewer than three subcontracting opportunities, fewer than three available HUBs or where it has been determined to be in the best interest of the County, HUB contract goals are not set and the solicitation is considered race-neutral. For contract values between \$50,000 and \$1M, the HUB staff can use the total business category annual aspirational goal to set the goal for the contract.

Some contracts are exempt from application of contract goals.<sup>5</sup> A one-page Short Form HUB Declaration (“SFHD”) is collected from contractors to capture any HUB subcontractor utilization. Goals and Good Faith Efforts (“GFEs”) do not apply.

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3. 34 Tex. Admin. Code § 20.294. Gross receipts or total employment levels during four consecutive years must not exceed the United States Small Business Association (“SBA”) size standards in 13 C.F.R. §121.201.

4. 34 Tex. Admin. Code § 20.282-283.

5. Excluded contracts include purchases exempt from competition under the Texas Local Government Code or deemed exempt by a Commissioners Court Order. Other exempted contracts are goods and services purchased through interlocal agreements, cooperative purchasing programs, or purchasing cards or from non-profit corporations; memberships in professional organizations; insurance coverage; third-party administration for self-funded risks; or are revenue-producing.

## **4. HUB Program Requirements and Procedures**

### **a. Good Faith Efforts Requirements**

A respondent to a solicitation for which a HUB goal has been established, must demonstrate its intent to include HUB participation by documenting utilization of HUBs or submitting Good Faith Efforts (“GFEs”) documentation. The VTS provides a searchable database of certified HUBs. Respondents can demonstrate GFEs by satisfying one of the following:

1. The respondent is a certified HUB and self-performs all the work on the project.
2. The respondent meets or exceeds the overall HUB goal by subcontracting to HUBs.
3. The respondent proposes only HUBs to fulfill all subcontracting opportunities identified in the Declaration and substantially meets the HUB goal (*i.e.*, 50% or more of the HUB goal).
4. If the respondent cannot meet or substantially meet the overall HUB goal, then the respondent shall follow the outreach requirements (described in the HUB declaration form). This includes submission of the required documentation evidencing compliance with the outreach requirements.

Failure to satisfy one of these options or provide the required documentation can cause the response to be deemed non-responsive for purposes of awarding the contract.

If HUB goals are not fully or substantially met, respondents must submit documentation that written notice was provided to at least three certified HUBs, all community partners and plan rooms at least seven business days prior to the solicitation submission date. The Notice must include the scope of work, information about where to review plans and specifications, bonding and insurance requirements, required qualifications and a point of contact.

### **b. Pre-Award Procedures**

The possible subcontracting opportunities are specified in the HUB Declaration form if the solicitation establishes a HUB goal. The HUB Declaration must include all proposed subcontractors, including second and third tier subcontractors, and be included with the solicitation response for the bid or proposal to be considered responsive. HUB staff are responsible for reviewing HUB Declarations to determine compliance, including the certification status of the listed HUBs. The Commissioners Court can reject the submission as non-responsive because it did not meet HUB requirements

or advise the HUB Director to accept the submission as being in the best overall interest of the County.

**c. Post Award Contract Administration and Compliance Procedures**

Bidders are required to provide honest and accurate information regarding HUB utilization pre- and post-contract award. The winning vendor's finalized HUB Declaration becomes part of the final contract. Contractors must not self-perform work designated for HUB subcontractors, make any changes in the scope of the contract or substitute any subcontractors in its Declaration without written approval of the Purchasing Agent or HUB Director. All requests for subcontractor substitutions or modifications must be made in writing to HUB staff and must be accompanied by an explanation that complies with the acceptable reasons and guidelines for subcontractor substitution in the County Purchasing Procedures Guide. GFEs apply and substitution of a HUB for another HUB subcontractor is encouraged.

HUB staff are responsible for verifying payments to subcontractors through the VTS and preparing reports about HUB subcontractor payments. Contractors and all first, second and third tier subcontractors are required by the Texas Prompt Pay Act to pay their subcontractors and suppliers within 10 days after they are paid. Contractors must submit a monthly Progress Assessment Report ("PAR") to document compliance with the HUB Declaration. Failure to submit a PAR with a monthly invoice can result in the County withholding payments or suspending work.

Contracts are audited for HUB compliance by the Purchasing Office staff. Possible sanctions include admonishment letters from the Purchasing Agent or County Attorney's Office demanding that the non-compliance be corrected; demands to the surety company for performance; notice of breach of contract and the exercise of contract remedies, including termination of the contract and imposition of damages; and suspension of eligibility for future contract awards for a specified set time period. The contractor may appeal the Purchasing Agent's decision in writing to the Commissioners Court. The decision by the Commissioners Court is final.

**5. Business Development, Outreach and Training**

The HUB staff sponsor a wide range of support services, forums, workshops, and outreach campaigns to increase visibility and to encourage participation of HUBs in the County's contracting opportunities.

**a. Technical Support and Outreach**

The HUB staff assist HUB vendors throughout the solicitation process by participating in pre-bid meetings, bid openings and pre-construction meetings. They also share construction plans and project information with contractors and trade associations. HUB staff work with local chambers of commerce, plan rooms, small business advocacy groups and community partners to provide technical assistance to HUBs. Topics include how to use the County's third-party vendor registration, procurement and bid notification system, Periscope S2G<sup>6</sup>; bidding opportunities; how to document GFEs; and how to obtain certification. The County website provides YouTube videos on how to complete the HUB Declaration form and how to find certified vendors.

HUB staff also publicize bidding opportunities, current projects and upcoming events and training sessions to HUBs through electronic notifications and through the County's website. Communications include bid alerts and opportunities, outreach events and upcoming training webinars.

The County also partners with other local agencies and governments. The Central Texas Small Business Partnership, which includes Travis County, the Austin Community College District, Austin Independent School District, the City of Austin, and Capitol Metro, conducts a wide range of outreach campaigns to encourage participation in HUB and other affirmative action contracting programs. Outreach campaigns range from invitations to conferences, networking events/mixers, the Meet-The-Buyers Conference, the Interagency HUB Vendor Fair, Central Texas Small Business Conference and the Bexar County Business Conference.

**b. Supportive Services and Other Resources**

The HUB program offers supportive services through its own programs or leveraging programs of other local entities. The County's website<sup>7</sup> provides links to technical support resources throughout the state to assist HUBs. These resources include 15 surety bond sources and the Procurement Technical Assistance Centers Program.

The Travis County Advisor Apprentice Program ("TCAAP") was introduced in 2017 to facilitate mentor-protégé relationships between experienced contractors and HUBs. The voluntary program requires a one-year commitment through a formal agreement and provides professional guidance and

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6. Periscope S2G provides the web-based bidding service. Registration is free. <https://prod.bidsync.com/travis-county>. There is a fee for premium accounts that show bids from government agencies across the U.S. The service was previously named from BidSync.

7. <https://www.traviscountytexas.gov/purchasing/hub>.

support to HUBs to foster their development and growth. Applications are reviewed and advisors and apprentices are matched according to goals set by the TCAAP Application Review Committee. Upon completion of the apprenticeship and three courses, HUBs receive a Certificate, Commissioners Court recognition and County social media, photo opportunities, a digital stamp/emblem for their website and business cards and a capabilities statement to show they participated in the program. Due to the coronavirus pandemic, the program is currently on hold.

In 2019, the County and the IC2 Institute of the Jon Brumley Texas Venture Labs at the McCombs School of Business UT Austin, invited HUBs to participate in a free 10-week accelerator program to match Austin-area startups with UT-Austin graduate student teams. The objective was to advance the growth of HUBs. The program was promoted in two orientation sessions conducted specifically for HUBs. In 2020, the Institute prepared a Resource Guide for HUBs in the Austin area that provides information about contracting with the County and other local governments.

In April 2021, the Commissioners Court approved a Readiness Training Program to provide the tools necessary for small businesses to increase their capacities. The program is a joint effort between the County and IC2.

**c. Staff Training**

Training is a major emphasis for Purchasing and HUB staff. HUB and Purchasing staff regularly attend the annual B2Gnow User Training Conference, the American Contract Compliance Association's annual National Training Institute and SAP software training. In 2021, HUB and Purchasing Office staff participated in Nancy Conner Consulting's three-part virtual training series that provided instruction on creating an effective supplier diversity process.

HUB staff also provide internal training to relevant departments about the program and the HUB staff's role in the procurement process. A primary objective for the program in the next year is development of a HUB 101 and HUB 201 training program for County staff involved in procurement.

**6. Business Owners' Experiences with Travis County's HUB Program**

To explore the experiences of businesses seeking opportunities on County contracts, we solicited input from 51 individuals and sought their suggestions for changes. We also collected written comments from 105 businesses about their experiences with the HUB program through an electronic survey. The following are summaries of the issues discussed during the interviews and in the survey comments.



**a. Business Owner Interviews**

*Access to Information about Contracting and Procurement Opportunities:* Many interviewees expressed frustration with accessing information about County contracting and procurement opportunities. Additional outreach efforts by the County were one suggestion for increasing M/WBEs' access to information. Several small business owners supported moving to virtual networking events to save time while increasing participation.

*Payments:* Few firms reported issues with payment by the County. However, subcontractors were often at the mercy of the prime vendor.

*M/WBEs' Experiences with Travis County's HUB Program:* Some M/WBEs had been able to use the goals to develop relationships that lead to work outside goals programs.

*Meeting HUB Goals:* Most prime bidders were able to meet HUB contract goals. Firms that were unable to meet the contract goal reported that the County was reasonable in evaluating their GFEs to do so. However, Travis County's complex requirements for bidders created the perception that the bidder must contact at least three firms in each listed code for the project, regardless of whether the firm would in fact be using any firm in a specific code or whether the bidder had already met or exceeded the goal, creating unnecessary burdens and unproductive results for all parties. This additional GFEs requirement has led to wasted efforts and unfulfilled expectations for HUB firms.

**b. Business Owner Survey Comments**

Survey comments were consistent with those from the interviews. Overall, most minority and woman business owners strongly supported the program. Certification and goals remain necessary to obtaining work. However, several respondents noted some challenges. Some HUBs reported they had trouble accessing information about business and professional networks, needed more assistance with overcoming barriers such as insurance and bonding requirements and wanted more program oversight to ensure compliance.

Unbundling projects, increased outreach and relationship-building with primes, assistance with bonding, financing and insurance, and partnering arrangements with primes and larger firms were welcomed as important approaches to increase opportunities.

## C. Utilization, Availability and Disparity Analyses of Travis County's Contracts

The Study examined Travis County's contract dollars awarded for fiscal years 2014 through 2019. The Final Contract Data File ("FCDF") contained 386 prime contracts and 766 subcontracts.<sup>8</sup> Because of this relatively small number of contracts, we did not have to develop a sample and therefore analyzed the entire corpus of records, including job order contracts. The net dollar value of contracts to prime contractors and subcontractors was \$455,733,819. The following tables present key results.

Table 1-1 presents data on the 132 NAICS codes contained in the FCDF. The third column represents the share of all contracts to firms performing work in a particular NAICS code. The fourth column presents the cumulative share of Travis County's spending from the NAICS code with the largest share to the NAICS code with the smallest share.

**Table 1-1: Industry Percentage Distribution of Travis County Contracts by Dollars**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	22.4%	22.4%
238220	Plumbing, Heating, and Air-Conditioning Contractors	11.2%	33.6%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	7.1%	40.7%
236220	Commercial and Institutional Building Construction	6.5%	47.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	5.2%	52.3%
541330	Engineering Services	4.0%	56.4%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.9%	59.3%
624310	Vocational Rehabilitation Services	2.7%	61.9%
517410	Satellite Telecommunications	2.6%	64.6%
541512	Computer Systems Design Services	2.1%	66.7%
238390	Other Building Finishing Contractors	1.9%	68.5%

8. Missing North American Industry Classification System ("NAICS") codes of prime contractors and subcontractors were assigned by CHA.

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238310	Drywall and Insulation Contractors	1.8%	70.4%
238910	Site Preparation Contractors	1.7%	72.1%
624110	Child and Youth Services	1.6%	73.7%
238990	All Other Specialty Trade Contractors	1.4%	75.1%
238150	Glass and Glazing Contractors	1.4%	76.4%
518210	Data Processing, Hosting, and Related Services	1.3%	77.7%
561730	Landscaping Services	0.9%	78.6%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.8%	79.3%
237110	Water and Sewer Line and Related Structures Construction	0.7%	80.1%
238120	Structural Steel and Precast Concrete Contractors	0.7%	80.8%
531210	Offices of Real Estate Agents and Brokers	0.7%	81.5%
237990	Other Heavy and Civil Engineering Construction	0.7%	82.1%
541690	Other Scientific and Technical Consulting Services	0.6%	82.8%
621498	All Other Outpatient Care Centers	0.6%	83.4%
238290	Other Building Equipment Contractors	0.6%	84.0%
561612	Security Guards and Patrol Services	0.6%	84.6%
238140	Masonry Contractors	0.6%	85.3%
238160	Roofing Contractors	0.6%	85.8%
561720	Janitorial Services	0.5%	86.4%
238320	Painting and Wall Covering Contractors	0.5%	86.9%
541310	Architectural Services	0.5%	87.4%
541370	Surveying and Mapping (except Geophysical) Services	0.5%	88.0%
238350	Finish Carpentry Contractors	0.5%	88.5%
238330	Flooring Contractors	0.5%	89.0%
561110	Office Administrative Services	0.5%	89.4%
541511	Custom Computer Programming Services	0.5%	89.9%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.4%	90.3%
541211	Offices of Certified Public Accountants	0.4%	90.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
624190	Other Individual and Family Services	0.4%	91.2%
624229	Other Community Housing Services	0.4%	91.6%
562111	Solid Waste Collection	0.4%	92.0%
811111	General Automotive Repair	0.4%	92.4%
722310	Food Service Contractors	0.4%	92.8%
237130	Power and Communication Line and Related Structures Construction	0.4%	93.2%
541380	Testing Laboratories	0.4%	93.5%
424410	General Line Grocery Merchant Wholesalers	0.4%	93.9%
485991	Special Needs Transportation	0.3%	94.2%
424490	Other Grocery and Related Products Merchant Wholesalers	0.3%	94.5%
624120	Services for the Elderly and Persons with Disabilities	0.3%	94.8%
493110	General Warehousing and Storage	0.2%	95.0%
523930	Investment Advice	0.2%	95.2%
238110	Poured Concrete Foundation and Structure Contractors	0.2%	95.5%
561621	Security Systems Services (except Locksmiths)	0.2%	95.7%
624221	Temporary Shelters	0.2%	95.9%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.2%	96.0%
541990	All Other Professional, Scientific, and Technical Services	0.2%	96.2%
424470	Meat and Meat Product Merchant Wholesalers	0.2%	96.4%
541620	Environmental Consulting Services	0.2%	96.6%
561613	Armored Car Services	0.2%	96.7%
238340	Tile and Terrazzo Contractors	0.1%	96.9%
541820	Public Relations Agencies	0.1%	97.0%
424110	Printing and Writing Paper Merchant Wholesalers	0.1%	97.1%
561990	All Other Support Services	0.1%	97.3%
611710	Educational Support Services	0.1%	97.4%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
562910	Remediation Services	0.1%	97.5%
621512	Diagnostic Imaging Centers	0.1%	97.6%
624210	Community Food Services	0.1%	97.8%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.1%	97.9%
541320	Landscape Architectural Services	0.1%	98.0%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.1%	98.1%
541110	Offices of Lawyers	0.1%	98.2%
323111	Commercial Printing (except Screen and Books)	0.1%	98.3%
621112	Offices of Physicians, Mental Health Specialists	0.1%	98.4%
424950	Paint, Varnish, and Supplies Merchant Wholesalers	0.1%	98.5%
493120	Refrigerated Warehousing and Storage	0.1%	98.5%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.1%	98.6%
561440	Collection Agencies	0.1%	98.7%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.1%	98.8%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.1%	98.8%
611699	All Other Miscellaneous Schools and Instruction	0.1%	98.9%
541612	Human Resources Consulting Services	0.1%	99.0%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.1%	99.0%
562991	Septic Tank and Related Services	0.1%	99.1%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.1%	99.1%
621511	Medical Laboratories	0.1%	99.2%
541611	Administrative Management and General Management Consulting Services	0.05%	99.2%
541618	Other Management Consulting Services	0.05%	99.3%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.05%	99.3%
423390	Other Construction Material Merchant Wholesalers	0.05%	99.4%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.04%	99.4%
423440	Other Commercial Equipment Merchant Wholesalers	0.04%	99.5%
541519	Other Computer Related Services	0.04%	99.5%
445230	Fruit and Vegetable Markets	0.04%	99.5%
484210	Used Household and Office Goods Moving	0.03%	99.6%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.03%	99.6%
237120	Oil and Gas Pipeline and Related Structures Construction	0.03%	99.6%
561710	Exterminating and Pest Control Services	0.03%	99.7%
541420	Industrial Design Services	0.03%	99.7%
454110	Electronic Shopping and Mail-Order Houses	0.02%	99.7%
491110	Postal Service	0.02%	99.7%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.02%	99.8%
541350	Building Inspection Services	0.02%	99.8%
511210	Software Publishers	0.02%	99.8%
532111	Passenger Car Rental	0.02%	99.8%
811191	Automotive Oil Change and Lubrication Shops	0.02%	99.8%
424910	Farm Supplies Merchant Wholesalers	0.01%	99.8%
621999	All Other Miscellaneous Ambulatory Health Care Services	0.01%	99.9%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.01%	99.9%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.01%	99.9%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	0.01%	99.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
423210	Furniture Merchant Wholesalers	0.01%	99.9%
424130	Industrial and Personal Service Paper Merchant Wholesalers	0.01%	99.9%
561320	Temporary Help Services	0.01%	99.9%
541613	Marketing Consulting Services	0.01%	99.9%
722513	Limited-Service Restaurants	0.01%	99.9%
561790	Other Services to Buildings and Dwellings	0.01%	99.95%
541720	Research and Development in the Social Sciences and Humanities	0.01%	99.96%
444190	Other Building Material Dealers	0.01%	99.96%
238130	Framing Contractors	0.01%	99.97%
524126	Direct Property and Casualty Insurance Carriers	0.01%	99.97%
236210	Industrial Building Construction	0.01%	99.98%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.005%	99.98%
236118	Residential Remodelers	0.005%	99.99%
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0.004%	99.99%
488490	Other Support Activities for Road Transportation	0.004%	99.995%
221310	Water Supply and Irrigation Systems	0.002%	99.997%
541930	Translation and Interpretation Services	0.001%	99.998%
541922	Commercial Photography	0.001%	99.999%
448210	Shoe Stores	0.001%	99.9996%
811490	Other Personal and Household Goods Repair and Maintenance	0.0002%	99.9998%
212321	Construction Sand and Gravel Mining	0.0002%	100.0000%
<b>TOTAL</b>		<b>100.0%</b>	

*Source: CHA analysis of Travis County data*

To determine the geographic market area, we applied the standard of identifying the firm locations that account for at least 75% of contract and subcontract dollar payments in the FCDF.<sup>9</sup> Firm location was determined by ZIP code and aggregated into counties as the geographic unit. Contracts awarded to firms located in the

state of Texas accounted for 86.9% of all dollars during the study period. The five counties within the Austin Metropolitan Area— Bastrop, Caldwell, Hays, Travis, and Williamson Counties— captured 77.9% of the dollars spent in the state of Texas and 67.7% of the entire FCDF. Therefore, these five counties were determined to be the geographic market for Travis County, and we limited our analysis to firms in these counties.

The next step was to determine the dollar value of Travis County’s utilization of M/WBEs as measured by payments to prime firms and subcontractors and disaggregated by race and gender.<sup>10</sup>

Table 1-2 presents the distribution of contract dollars for fiscal years 2014 through 2019. Chapter IV provides detailed breakdowns of these results.

**Table 1-2: Distribution of Travis County Contract Dollars by Race and Gender**  
(share of total dollars)

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
212321	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
236115	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
236118	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	2.4%	1.2%	51.5%	0.0%	55.1%	11.8%	66.9%	33.1%	100.0%
237110	0.0%	22.8%	9.1%	0.0%	31.9%	43.7%	75.6%	24.4%	100.0%
237120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.3%	0.6%	0.3%	0.0%	1.1%	2.9%	4.0%	96.0%	100.0%
237990	0.0%	0.0%	0.0%	0.0%	0.0%	3.5%	3.5%	96.5%	100.0%
238110	15.3%	0.0%	0.0%	0.0%	15.3%	0.0%	15.3%	84.7%	100.0%
238120	0.0%	1.2%	0.1%	0.0%	1.3%	0.0%	1.3%	98.7%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238140	7.2%	13.4%	0.0%	0.0%	20.6%	0.0%	20.6%	79.4%	100.0%
238150	2.8%	0.0%	0.0%	0.0%	2.8%	0.5%	3.3%	96.7%	100.0%
238160	0.0%	19.0%	0.0%	0.0%	19.0%	1.6%	20.6%	79.4%	100.0%

9. National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14346> (“National Disparity Study Guidelines”), at p. 29.

10. For our analysis, the term “M/WBE” or HUB includes firms that are certified by government agencies and minority- and woman-owned firms that are not certified.



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NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
238210	2.3%	9.6%	9.3%	0.0%	21.2%	7.8%	29.0%	71.0%	100.0%
238220	0.5%	1.3%	4.8%	0.0%	6.7%	2.8%	9.5%	90.5%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238310	0.0%	2.6%	0.0%	0.0%	2.6%	11.4%	14.0%	86.0%	100.0%
238320	0.0%	51.8%	0.0%	0.0%	51.8%	6.0%	57.8%	42.2%	100.0%
238330	0.0%	10.9%	3.0%	0.0%	13.9%	63.1%	77.0%	23.0%	100.0%
238340	0.0%	0.0%	0.0%	0.0%	0.0%	47.2%	47.2%	52.8%	100.0%
238350	34.6%	1.1%	0.0%	0.0%	35.7%	16.4%	52.1%	47.9%	100.0%
238390	0.0%	6.2%	0.0%	0.0%	6.2%	7.5%	13.7%	86.3%	100.0%
238910	0.0%	0.0%	9.2%	0.0%	9.2%	20.5%	29.8%	70.2%	100.0%
238990	0.0%	0.8%	7.3%	0.0%	8.1%	18.4%	26.6%	73.4%	100.0%
323111	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	14.0%	0.0%	0.0%	14.0%	0.0%	14.0%	86.0%	100.0%
423450	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
423510	0.0%	0.0%	0.0%	0.0%	0.0%	44.4%	44.4%	55.6%	100.0%
423810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423850	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
423990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424690	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
424910	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
444190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
454110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	0.1%	20.5%	0.1%	0.0%	20.7%	72.8%	93.5%	6.5%	100.0%
485991	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
488490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
493110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
517410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

Travis County Disparity Study 2021

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
523930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
524126	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
532111	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541211	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541310	9.9%	0.0%	53.2%	0.0%	63.1%	5.5%	68.6%	31.4%	100.0%
541320	0.0%	27.5%	1.7%	0.0%	29.2%	9.2%	38.5%	61.5%	100.0%
541330	1.5%	11.1%	3.1%	0.0%	15.7%	36.4%	52.1%	47.9%	100.0%
541370	7.7%	4.3%	0.0%	0.0%	12.0%	82.7%	94.7%	5.3%	100.0%
541380	23.0%	11.1%	12.2%	0.0%	46.3%	36.9%	83.2%	16.8%	100.0%
541420	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541511	0.0%	3.8%	0.0%	0.0%	3.8%	96.2%	100.0%	0.0%	100.0%
541611	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541612	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541613	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541618	49.2%	23.9%	0.0%	0.0%	73.1%	0.0%	73.1%	26.9%	100.0%
541620	0.0%	0.0%	1.8%	0.0%	1.8%	88.3%	90.1%	9.9%	100.0%
541690	0.0%	4.5%	1.9%	0.0%	6.5%	36.5%	43.0%	57.0%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	0.0%	78.2%	78.2%	21.8%	100.0%
541820	10.2%	0.0%	0.0%	0.0%	10.2%	59.6%	69.8%	30.2%	100.0%
541922	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	0.0%	0.0%	0.0%	0.0%	0.0%	21.0%	21.0%	79.0%	100.0%
561320	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561720	0.0%	0.0%	1.6%	66.9%	68.4%	0.0%	68.4%	31.6%	100.0%
561730	36.9%	5.2%	0.0%	3.6%	45.7%	8.5%	54.2%	45.8%	100.0%
561990	0.0%	6.8%	0.0%	0.0%	6.8%	1.1%	7.9%	92.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
611699	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
611710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621112	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621498	0.0%	0.0%	0.0%	0.0%	0.0%	74.7%	74.7%	25.3%	100.0%
621511	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624221	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624229	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811111	0.0%	0.0%	8.1%	0.0%	8.1%	0.0%	8.1%	91.9%	100.0%
811490	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
<b>Total</b>	<b>1.5%</b>	<b>3.0%</b>	<b>6.4%</b>	<b>0.2%</b>	<b>11.1%</b>	<b>11.6%</b>	<b>22.7%</b>	<b>77.3%</b>	<b>100.0%</b>

Source: CHA analysis of Travis County data

Using the modified “custom census” approach to estimating availability and the further assignment of race and gender using the FCDF, the Master M/WBE/HUB Directory and other sources, we determined the unweighted availability of M/WBEs in Travis County’s market area. For further explanation of the role of unweighted and weighted availability and how these are calculated, please see Appendix D.<sup>11</sup>

11. The USDOT “Tips for Goal Setting” urges recipients to weight their headcount of firms by dollars spent. See Tips for Goal-Setting in the Disadvantaged Business Enterprise Program, <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

**Table 1-3: Aggregated Unweighted M/WBE Availability for Travis County Contracts**

Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
0.6%	1.3%	3.3%	0.1%	5.3%	3.9%	9.2%	90.8%	100.0%

*Source: CHA analysis of Travis County data*

We next determined the aggregated availability of M/WBEs, weighted by Travis County's spending in its geographic and industry markets. Table 1-4 presents these results. The overall, weighted M/WBE availability result can be used by Travis County to determine its overall, aspirational goal.

**Table 1-4: Aggregated Weighted Availability**

Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
2.0%	6.0%	6.6%	0.2%	14.8%	6.6%	21.5%	78.5%	100.0%

*Source: CHA analysis of Travis County data; Hoovers; CHA Master Directory*

We next calculated disparity ratios for total M/WBE utilization compared to the total weighted availability of M/WBEs, measured in dollars paid.

A *disparity ratio* is the relationship between the utilization and weighted availability, determined above. Mathematically, this is represented by:

$$DR = U/WA$$

Where DR is the disparity ratio; U is utilization rate; and WA is the weighted availability.

The courts have held that disparity results must be analyzed to determine whether the results are "significant". There are two distinct methods to measure a result's significance. First, a "large" or "substantively significant" disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.<sup>12</sup> Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.<sup>13</sup> A more in-

12. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

depth discussion of statistical significance is provided in Chapter IV and Appendix C.

Table 1-5 presents the calculated disparity ratios for each demographic group. The disparity ratios for three group – Blacks, Hispanics, and MBEs as a whole– are substantively significant. The disparity ratio for White Women is statistically significant at the 0.01 level.

**Table 1-5: Disparity Ratios by Demographic Group**

	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE
Disparity Ratio	74.6% <sup>‡</sup>	50.1% <sup>‡</sup>	96.4%	101.8%	74.8% <sup>‡</sup>	174.7%**	105.7%	98.4%

*Source: CHA analysis of Travis County data*

*\*\* Indicates statistical significance at the 0.01 level*

*‡ Indicates substantive significance*

In summary, we found substantively significant negative disparities for Blacks, Hispanics, and MBEs as a whole. In addition, our examination of Travis County’s utilization data revealed that its spending with M/WBEs was more concentrated among a few firms than its spending with non-M/WBEs. This indicates that what success M/WBE groups achieved in being awarded County contracts was limited to a few firms and not dispersed as widely as among non-M/WBE firms.

## D. Analysis of Disparities in the Travis County Area Economy

Evidence of the experiences of minority- and woman-owned firms outside of the HUB program is relevant and probative of the likely results of the County adopting a race-neutral program, because contracting diversity programs are rarely imposed outside of specific government agencies. To examine the outcomes throughout the Travis County area economy, we explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in the County’s industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in the County’s prime contract and subcontract opportunities.

We analyzed the following data and literature:

- 
13. A chi-square test – examining if the utilization rate was different from the weighted availability – was used to determine the statistical significance of the disparity ratio.

- Austin Metropolitan Area data from the Census Bureau’s American Community Survey from 2015 through 2019. This rich data set establishes with greater certainty any causal links between race, gender and economic outcomes. We employed a multiple regression statistical technique to examine the rates at which minorities and women form firms. In general, we found that even after considering potential mitigating factors, business formation rates by Blacks, Hispanics and White women are lower compared to White males. The data indicate that non-Whites and White women receive lower wages and Blacks and White women receive lower business earnings after controlling for possible explanatory factors. These analyses support the conclusion that barriers to business success do affect non-Whites and White women entrepreneurs.
- Industry Data from the Census Bureau’s 2017 Annual Business Survey from 2017. This dataset indicated large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), and the payroll of employer firms.
- Surveys and literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed. These results support the conclusions drawn from the anecdotal interviews and analysis of the County’s contract data that M/WBEs face obstacles to achieving success on contracts outside of M/WBE programs.

All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in overall marketplace discrimination without some type of affirmative intervention. This evidence supports the conclusion that the County should continue to use race-conscious contract goals to ensure a level playing field for all firms.

## **E. Qualitative Evidence of Race and Gender Barriers in Travis County’s Market**

In addition to quantitative data, anecdotal evidence of firms’ marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for M/WBEs such that race-conscious contract goals are needed to ensure equal opportunities to compete for contracts. To explore this type of anecdotal evidence, we received input from 51 participants in small group business owner interviews. We also received 105 responses to an electronic anecdotal survey and written comments during the study period. We

have also appended a summary of the anecdotal results of the numerous disparity studies we have conducted in Texas.<sup>14</sup>

## **1. Business Owner Interviews**

Many minority and woman business owners reported that while some progress has been made in integrating their firms into public and private sector contracting activities through race- and gender-conscious contracting programs, significant barriers remain.

The following are brief summaries of the most common views expressed by numerous participants.

- Many minority and female firm owners reported that they continue to experience negative assumptions and perceptions about their competency and capabilities. There is often a stigma to being an M/WBE.
- Some women continue to encounter sexist behaviors and attitudes. However, one White woman stated that she has never suffered from sexism.
- Most M/WBEs agreed that HUB program goals remain necessary to level the playing field.
- Private sector work was reported to be especially difficult to access.

## **2. Electronic Business Owner Survey**

Results from the electronic survey were similar to those of the interviews. Almost one third (29.5%) reported they still experience barriers to equal contracting opportunities; over a quarter (25.7%) said their competency was questioned because of their race or gender; and 14.3% indicated they had experienced job-related sexual or racial harassment or stereotyping.

Responses to the survey's open-ended questions expressed these experiences in further detail. The following is a summary of the most common written responses received.

- Racial discrimination and negative attitudes about competency continue to impede the ability of minority firms to obtain contracts on an equal basis.
- Some woman and minority business owners reported sexual harassment and racist comments.

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14. Appendix E: Qualitative Evidence from Texas Disparity Studies.

- The experiences of several Black respondents were especially negative.
- While some minorities and women reported overt discrimination, others reported discrimination that was difficult to document.
- Many woman owners reported sexism and stereotyping about their roles and authority that precluded them from business opportunities.
- Some HUBs reported being certified carried a stigma because of the assumption that minority or woman firms are less qualified.
- Some M/WBEs reported that they experienced pressure to reduce pricing relative to non-M/WBE firms.
- M/WBE respondents reported that they did not have access to information that would help them to compete on an equal basis.
- Surety bonding access and the cost of insurance were reported to be barriers to M/WBEs taking on larger projects and obtaining work in general.
- Many M/WBEs faced discriminatory barriers in obtaining capital and banking services. This lack of access places M/WBEs at a disadvantage and limits their ability to take on work.
- Some M/WBE respondents reported barriers based on their firm size.

## **F. Recommendations for the HUB Program**

The quantitative and qualitative evidence reported in this Study present a thorough examination of whether minorities and women doing business in Travis County's market have full and fair opportunities to compete for its prime contracts and associated subcontracts. The findings support the conclusion that M/WBEs continue to suffer discriminatory barriers and that targeted, affirmative responses are warranted. We therefore make the following recommendations.

### **1. Augment Race- and Gender-Neutral Measures**

The courts require that governments use race- and gender-neutral approaches to the maximum feasible extent to address identified discrimination. This is a critical element of narrowly tailoring the Program, so that the burden on non-M/WBEs is no more than necessary to achieve the County's remedial purposes. Increased participation by M/WBEs through race-neutral measures will also reduce the need to set M/WBE contract goals. We therefore suggest the following enhancements of the County's current efforts, based on the business



owner interviews and survey responses, input of agency staff, and national best practices for business development programs.

**a. Increase Program Resources**

The most critical recommendation is to increase County staff and technical resources devoted to the Program. Most of the other suggestions, discussed below, are dependent upon enough personnel to deliver the enhancements to M/WBEs and small firms. The current staffing levels are simply insufficient to provide more activities and services to support inclusion. The County currently has six positions devoted to the program, including the staff in Procurement. By contrast, the City of Austin has 17 positions devoted to administering the M/WBE program, not including staff that conduct certifications. The current personnel have supported M/WBEs and the requirements of the Program by their strong personal commitment to inclusion and hard work, as well as the support of the Commissioners Court. However, at least eight additional staff members are needed to implement improvements such as increased outreach, expanded access to information and networking, enhanced monitoring of contractual commitments, review of bids for non-discrimination, more narrowly tailored contract goal setting, increased reporting to the Court and the public, and requiring real estate development projects to participate in the Program.

**b. Review Bids and Proposals to Ensure Bidder Non-Discrimination and Fairly Priced Subcontractor Quotations**

The 2016 Disparity Study recommended that the County ensure non-discrimination by requiring bidders to maintain all subcontractor quotes received on larger projects. We reiterate this recommendation. However, additional staff is needed to actually make progress on this recommendation.

**c. Create a Procurement Forecast**

While the County does have a page, Contracts Search,<sup>15</sup> where potential vendors can research contracts and when the contracts expire, this is both laborious and may not fully provide information on future opportunities for County work. While not a quick or easy feature to implement and one that will likely require more staff resources, a page that provides information on upcoming bid opportunities<sup>16</sup> is one race- and gender-neutral measure that will assist all firms to access information. This is especially important

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15. Contracts Search ([traviscountytexas.gov](http://traviscountytexas.gov)).

16. See, for example, the City of Chicago's Buying Opportunities page. <https://www.chicago.gov/city/en/depts/dps/provdrs/contract/svcs/city-of-chicago-consolidated-buying-plan.html> [chicago.gov].

since many business owners expressed frustration about the difficulties in accessing information about opportunities in time to gather information and form teams to respond to invitations for bids or requests for proposals.

**d. Enhance Opportunities on Design Projects**

Many M/WBEs reported that, in their experience, the process for awarding design contracts was not sufficiently transparent or inclusive. While an application requirement reduces the burden on agency staff, it imposes a barrier to full participation by M/WBEs.

To address these concerns and increase HUB opportunities on design projects, not only as subconsultants but also as prime consultants, we suggest the HUB and Engineering staff take the following actions:

- Open up the Prequalified List for design firms for contracts up to \$500,000 for applications at any time.
- Conduct targeted outreach when the application period opens.
- Provide technical assistance on how to apply.
- Reach out to new firms to ensure they understand how to navigate the consultant contracting process.
- Conduct targeted outreach events for larger projects to assist certified firms to network with larger consultants.
- Provide a separate report to the Commissioners on these contracts to increase focus on opportunities that are well within the capabilities of HUBs and small firms.

The County should also require a proposer to explain at the time of proposal submission how it will include HUBs if it is not a certified firm. Waiting until firms have been preliminarily chosen for award reduces the negotiating leverage of HUBs and creates the impression that diversity is not central to the evaluation process.

**e. Continue to Focus on Reducing Barriers to M/WBE Prime Contract Awards**

The 2016 Study recommended that the County increase efforts to make prime contract awards to M/WBEs, and progress continues to be made. The County has developed contract specifications with an eye towards unbundling projects into less complex scopes and lower dollar values. It has also increased the use of Job Order Contracts, which have lower bonding, financing and experience standards on some contracts. These efforts should continue.

We again suggest reviewing surety bonding, insurance and experience requirements in general to ensure that they are no greater than necessary to protect the County's interests. These are possible barriers to contracting by small firms that have been mentioned by the courts as areas to be considered. Steps might include reducing or eliminating insurance requirements on smaller contracts and removing the cost of the surety bonds from the calculation of lowest apparent bidder on appropriate solicitations. The Procurement and HUB staff should work with other departments on this review.

**f. Adopt a Pilot "Quick Pay" Program**

The County should consider adopting a pilot "quick pay" program, where general contractors on specified larger contracts (perhaps greater than \$5M) must submit their invoices twice a month and then pay their subcontractors within five days of every progress payment received from the County. This will help to smooth out the cash flow challenges of HUBs and small firms and make County work more attractive to these firms.

**g. Create Department Scorecards**

A "best in class" contracting diversity program requires that all departments and County staff take ownership of diversity and inclusion. The Program cannot be seen as "Purchasing's Program". One way to ensure that all staff with contracting and procurement responsibilities focus on including HUBs is to require an annual report on each department's efforts to increase inclusion. The report should detail the participation by HUBs in the department's overall spend, disaggregated by race, gender and industry code. The report could also include outreach efforts and other steps that were taken to increase HUB participation. These reports can then be used to develop a score card for each user department.

**h. Consider Partnering with Other Agencies to Implement a Small Contractor Bonding and Financing Program**

Access to bonding and working capital are major barriers to the development and success of M/WBEs and small firms. Traditional underwriting standards have often excluded these businesses. We therefore recommend that the County explore working with other local agencies on a bonding and financing program. This approach goes beyond providing information about outside bonding resources by offering actual assistance to firms through a team of program consultants. It would not, however, function as a bonding guarantee program that places the County's credit at risk or provides direct subsidies to participants. Rather, this concept brings the com-

mitment of a lender and a surety to finance and bond firms that have successfully completed the training and mentoring program.

## **2. Continue to Implement Narrowly Tailored Race- and Gender-Conscious Measures**

### **a. Use the Study to Set the Overall, Annual Aspirational HUB Goal**

The County's program has been very successful in opening up opportunities for HUBs on its contracts. As reported in Chapter IV, utilization has been significantly higher than availability for M/WBEs overall. However, when we examined whether firms were concentrated within an industry or between industries on the basis of race or gender, a picture emerged of unequal outcomes for M/WBEs compared to non-M/WBEs. Further, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that M/WBEs do not yet enjoy full and fair access to opportunities to compete. The results of numerous small business credit surveys reveal that M/WBEs, especially Black-owned firms, suffer significant barriers to business financing. There are also race-based barriers to the development of the human capital necessary for entrepreneurial success.

Our interviews with individual business owners and stakeholders and the results of our survey further buttress the conclusion that race and sex discrimination remain persistent barriers to equal contracting opportunities. Many minority and female owners reported that they still encounter barriers based on their race and/or gender and that without affirmative intervention to increase opportunities through contract goals, they will continue to be denied full and fair chances to compete.

In our judgment, the County's utilization of HUBs is the result of the operations of its program, not the cessation of discrimination outside of contracting affirmative action programs. Without the use of goals, the agency may become a "passive participant" in the market failure of discrimination.

We therefore recommend that the County continue to use narrowly tailored measures. These should include using the weighted availability estimates to set its overall, annual aspirational HUB goal.

### **b. Use the Study to Set HUB Contract Goals**

In addition to setting an overall, annual target, the County should use the Study's detailed unweighted availability estimates as the starting point for contract specific goals. As discussed in Chapter II of this Report, an agency's constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project. This methodology involves four steps:

- Weight the estimated dollar value of the scopes of the contract by six-digit NAICS codes, as determined during the process of creating the solicitation.
- Determine the unweighted availability of HUBs in those scopes as estimated in the Study.
- Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
- Adjust the resulting percentage based on current market conditions and progress towards the annual goals.

Written procedures spelling out the steps should be drafted.

This constitutionally mandated approach may result in goals that are higher or lower than the annual goals, including no goals where there are insufficient subcontracting opportunities (as is often the case with supply contracts) or an insufficient number of available firms.

Other enhancements could include:

- Broadening the reach of the Program to include setting goals for contracts expected to cost at least \$50,000.
- Providing the list of codes used to set the contract goal with the solicitation.
- Stating only the overall HUB goal in the solicitation.
- Review change orders of more than 10% for the impact on the contract goal.
- Bidding some “control contracts” without goals that have significant opportunities for HUB participation.

**c. Strengthen Program Administration**

While the current Program has produced admirable results, there are some possible revisions that can strengthen the County’s efforts. We make the following recommendations:

- Permitting HUBs acting as prime vendors to count their self-performance towards the contract goal. Restricting the program to only subcontracting work is highly unusual, and limits opportunities for HUBs to grow into prime vendors. A subcontracting only program also fails to recognize that barriers to prime contracting opportunities are the most difficult for minority and woman businesses to overcome.

- Increase contract compliance monitoring. Commercially useful function reviews should be performed on all contracts over \$100,000.
- Simplify the Good Faith Efforts policy. Either the goal is met or it is not.
- Revise the current requirement that GFEs are met if only three HUBs are notified of the opportunity. This is not sufficient to ensure that HUBs are aware of contracts. Bidders' efforts should reflect reasonable efforts to meet the goal. We suggest the County adopt language similar to that in the DBE regulations.<sup>17</sup>
- Enhance the process for HUB inclusion on Job Order Contracts (that is, contracts that are procured with one vendor under a master agreement and then ordered per task). Attach the HUB Declaration Form to the solicitation. Conduct targeted outreach to increase HUB utilization, even though there are no contract specific goals. Use a sample contract to set the overall goal for the purpose of award. Make it clear that it is the total overall contract amount at closeout against which utilization will be measured; the contractor need not document GFEs for every task order.
- Develop standards for modifications to utilization plans to ensure that contractors abide by their commitments to listed HUBs and only make changes with the prior, written consent of the HUB staff.

**d. Expand the Program to Include Development Contracts**

Chapter 381 of the Local Government Code allows counties to provide incentives encouraging developers to build in their jurisdictions. Currently, the County only requires developers to submit an annual report of their HUB participation. If permitted under state law, we suggest that these projects be subject to the HUB program. While the County would not set contract goals or monitor day-to-day compliance, it could require that developers undergo training on the HUB program; purchase their own Vendor Tracking System license and utilize it to create regular reports for the County's review; and conduct targeted and documented outreach.

**e. Implement a Mentor-Protégé Program**

Many firms suggested the County adopt a mentor-protégé program for HUBs. We agree and suggest modeling it after the successful programs approved by the U.S. Department of Transportation. This program would

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17. 49 C.F.R. §26.53 ("What are the good faith efforts procedures recipients follow in situations where there are contract goals?") and Appendix A.

provide support for M/WBEs while incentivizing the mentor to provide targeted assistance to the protégé to produce identified and achievable goals.<sup>18</sup> As also described by several interviewees, it is important that any program provide real value to both parties to the mentoring agreement, not be mere window dressing or simply devolve into feel good meetings.

A program should include:

- A description of the qualifications of the mentor.
- A description of the qualifications of the protégé.
- A written County-approved development plan, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement, a schedule for meetings and development of action plans, and the services and resources to be provided by the mentor to the protégé.
- A long term and specific commitment between the parties, *e.g.*, 12 to 36 months.
- A provision for the use of any equipment or equipment rental.
- Extra credit for the mentor's use of the protégé to meet a contract goal (*e.g.*, 1.25% for each dollar spent), with a limit on the total percentage that could be credited on a specific contract and on total credits available under the Plan.
- Any financial assistance by the mentor to the protégé must be subject to prior written approval by the County and must not permit the mentor to assume control of the protégé or otherwise impinge on the protégé's continued program eligibility.
- A fee schedule to cover the direct and indirect cost for services provided by the mentor for specific training and assistance to the protégé.
- A provision that the Plan may be terminated by mutual consent or by the County.
- Submission of quarterly reports by the parties indicating their progress toward each of the Plan's goals.
- Regular review by the County of compliance with the Plan and progress towards meeting its objectives. Failure to adhere to the

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18. See 49 C.F.R. Part 26, Appendix D, "Mentor-Protégé Guidelines".

terms of the Plan or to make satisfactory progress would be grounds for termination from the Program.

We recognize that this level of direction and oversight will require resources. Close monitoring of the program will also be critical.

### **3. Develop Performance Measures for Program Success**

Travis County should develop quantitative performance measures for HUBs and the overall success of the Program to evaluate its effectiveness in reducing the systemic barriers identified in this Report. In addition to meeting the overall, annual goal, possible benchmarks might be:

- Decreases in the number of bids or proposals, broken down by the industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted evidence of its Good Faith Efforts to do so.
- Decreases in the number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make GFEs to meet the goal.
- Decreases in the number, industry and dollar amount of HUB substitutions during contract performance.
- Increases in bidding by certified firms as prime vendors.
- Increases in prime contract awards to certified firms.
- Increases in HUB bonding limits, size of jobs, profitability, complexity of work, etc.
- Increases in variety in the industries in which HUBs are awarded prime contracts and subcontracts.

### **4. Continue to Conduct Regular Program Reviews**

Travis County adopted a sunset date for the current Program, and we suggest this approach be continued. Data should be reviewed approximately every five to six years, to evaluate whether race- and gender-based barriers have been reduced such that affirmative efforts are no longer needed. If such measures continue to be necessary, the County must ensure that they remain narrowly tailored.



## II. LEGAL STANDARDS FOR THE TRAVIS COUNTY'S HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

### A. Summary of Constitutional Equal Protection Standards

To be effective, enforceable, and legally defensible, a race-based affirmative action program such as Travis County's Historically Underutilized Business ("HUB") program, that is designed to promote equity in public sector contracting, regardless of funding source, must meet the judicial test of constitutional "strict scrutiny".<sup>19</sup> Strict scrutiny constitutes the highest level of judicial review.<sup>20</sup> Strict scrutiny analysis is comprised of two prongs:

1. The government must establish its "compelling interest" in remediating race discrimination by current "strong evidence" of the persistence of discrimination. Such evidence may consist of the entity's "passive participation" in a system of racial exclusion.
2. Any remedies adopted must be "narrowly tailored" to that discrimination; the program must be directed at the types and depth of discrimination identified.<sup>21</sup>

The compelling governmental interest prong has been met through two types of proof:

1. Quantitative or statistical evidence of the underutilization of minority- or woman-owned firms by the agency and/or throughout the agency's geographic and industry market area compared to their availability in the market area.

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19. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

20. Strict scrutiny is used by courts to evaluate governmental action that classifies persons on a "suspect" basis, such as race. It is also used in actions purported to infringe upon fundamental rights. Legal scholars frequently note that strict scrutiny constitutes the most rigorous form of judicial review. *See, for example*, Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA Law Review 1267, 1273 (2007).

21. *Croson*, 488 U.S. at 510.

2. Qualitative or anecdotal evidence of race- or gender-based barriers to the full and fair participation of minority- and woman-owned firms in the market area or in seeking contracts with the agency.<sup>22</sup> Anecdotal data can consist of interviews, surveys, public hearings, academic literature, judicial decisions, legislative reports, and other information.

The narrow tailoring prong has been met by satisfying the following five factors. These elements ensure that the remedy “fits” the evidence:

1. The necessity of relief;<sup>23</sup>
2. The efficacy of race-neutral remedies at overcoming identified discrimination;<sup>24</sup>
3. The flexibility and duration of the relief, including the availability of waiver provisions;<sup>25</sup>
4. The relationship of numerical goals to the relevant labor market;<sup>26</sup> and
5. The impact of the relief on the rights of third parties.<sup>27</sup>

In *Adarand v. Peña*,<sup>28</sup> the United States Supreme Court extended the analysis of strict scrutiny, the most exacting standard of review, to race-based federal enactments such as the United States Department of Transportation (“USDOT”) Disadvantaged Business Enterprise (“DBE”) program for federally assisted transportation contracts. Similar to the local government context, the national legislature must have a compelling governmental interest for the use of race, and the remedies adopted must be narrowly tailored to that evidence.<sup>29,30</sup>

Most federal courts, including the Fifth Circuit,<sup>31</sup> have subjected preferences for Woman-Owned Business Enterprises (“WBEs”) to “intermediate scrutiny”.<sup>32</sup> Gender-based classifications must be supported by an “exceedingly persuasive justifi-

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22. *Id.* at 509.

23. *Id.* at 507.

24. *United States v. Paradise*, 480 U.S. 149, 171 (1987).

25. *Id.*

26. *Id.*

27. *Croson*, 488 U.S. at 506.

28. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (“*Adarand III*”).

29. *See, for example, Croson*, 488 U.S. at 492-493; *Adarand III*, 515 U.S. at 227; *see generally Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

30. Programs that fail to satisfy the constitutional strict scrutiny standard generally fail to meet the compelling government interest requirement, the narrow tailoring requirement, or both. Affirmative action programs are among the most heavily litigated issues involving race and the United States Constitution. Nonetheless, many of these programs meet both prongs, particularly those based upon solid statistical and anecdotal data. *See, Mary J. Reyburn, Strict Scrutiny Across the Board: The Effect of Adarand Constructors, Inc. v. Peña on Race-Based Affirmative Action Programs*, 45 Catholic University L. Rev. 1405, 1452 (1996).

31. *W.H. Scott Construction Co., Inc., v. City of Jackson, Mississippi*, 199 F.3d 206, 215 n.9 (5<sup>th</sup> Cir. 1999).

cation” and be “substantially related to the objective”.<sup>33</sup> The quantum of evidence necessary to satisfy intermediate scrutiny is less than that required to satisfy strict scrutiny. However, appellate courts have applied strict scrutiny to the gender-based presumption of social disadvantage in reviewing the constitutionality of the DBE program<sup>34</sup> or have held that the results would be the same under strict scrutiny.<sup>35</sup>

Classifications not based upon a suspect class (race, ethnicity, religion, national origin or gender) are subject to the lesser standard of review referred to as “rational basis” scrutiny.<sup>36,37</sup> The courts have held there are no equal protection implications under the Fourteenth Amendment of the United States Constitution for groups not subject to systemic discrimination.<sup>38</sup> In contrast to strict scrutiny and to intermediate scrutiny, rational basis means the governmental action or statutory classification must be “rationally related” to a “legitimate” government interest.<sup>39</sup> Thus, preferences for persons with disabilities or veteran status may be enacted with vastly less evidence than that required for race- or gender-based measures to combat historic discrimination.<sup>40</sup>

Unlike most legal challenges, the defendant bears the initial burden of producing “strong evidence” in support of its race-conscious program.<sup>41</sup> As held by the Fifth Circuit, the plaintiff must then proffer evidence to rebut the government’s case, and bears the ultimate burden of production and persuasion that the affirmative action program is unconstitutional.<sup>42</sup> “[W]hen the proponent of an affirmative

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32. See, e.g., *Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore and Maryland Minority Contractors Ass’n*, 83 F. Supp. 2d 613, 620 (D. Md. 2000); *W.H. Scott Construction*, 199 F.3d at 206, 215; *Engineering Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 907-911 (11th Cir. 1997) (“*Engineering Contractors II*”); *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1519 (10th Cir. 1994) (“*Concrete Works II*”); *Contractors Ass’n of Eastern Pennsylvania v. City of Philadelphia*, 6 F.3d 990, 1009-1011 (3rd Cir. 1993) (“*Philadelphia II*”); *Coral Construction Co. v. King County*, 941 F.2d 910, 930-931 (9th Cir. 1991).
  33. Cf. *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996).
  34. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 720 (7th Cir. 2007), (“*Northern Contracting III*”).
  35. *Western States Paving Co., Inc. v. Washington Department of Transportation*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).
  36. *Coral Construction*, 941 F. 2d at 921; see generally *Equality Foundation v. City of Cincinnati*, 128 F. 3d 289 (6th Cir. 1997).
  37. The Supreme Court first introduced this level of scrutiny in *Nebbia v. New York*, 291 U.S. 502, 537 (1934). The Court held that if laws passed have a reasonable relationship to a proper legislative purpose and are neither arbitrary nor discriminatory, the requirements of due process are satisfied.
  38. See generally *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).
  39. *Heller v. Doe*, 509 U.S. 312, 320 (1993).
  40. The standard applicable to status based on sexual orientation or gender identity has not yet been clarified by the courts.
  41. *Aiken v. City of Memphis*, 37 F.3d 1155, 1162 (6th Cir. 1994).
  42. *W. H. Scott Construction*, 199 F.3d at 219; *Adarand Constructors, Inc. v. Slater, Colorado DOT*, 228 F.3d 1147, 1166 (10th Cir. 2000), 532 U.S. 941, cert. granted then dismissed as improvidently granted, 534 U.S. 103 (2001) (“*Adarand VII*”).

action plan produces sufficient evidence to support an inference of discrimination, the plaintiff must rebut that inference in order to prevail.”<sup>43</sup>

A plaintiff “cannot meet its burden of proof through conjecture and unsupported criticism of [the government’s] evidence.”<sup>44</sup> To successfully rebut the government’s evidence, a plaintiff must introduce “credible, particularized evidence” that rebuts the government’s showing of a strong basis in evidence.<sup>45</sup> For example, in the challenge to the Minnesota and Nebraska DBE programs, “plaintiffs presented evidence that the data was susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to, and participation in, federally assisted highway contracts. Therefore, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.”<sup>46</sup> When the statistical information is sufficient to support the inference of discrimination, the plaintiff must prove that the statistics are flawed.<sup>47</sup> A plaintiff cannot rest upon general criticisms of studies or other related evidence; it must meet its burden that the government’s proof is inadequate to meet strict scrutiny, rendering the legislation or government program illegal.<sup>48</sup>

To meet strict scrutiny, studies such as this one have been conducted to gather the statistical and anecdotal evidence necessary to support the use of race- and gender-conscious measures to combat discrimination. These are commonly referred to as “disparity studies” because they analyze any disparities between the opportunities and experiences of minority- and woman-owned firms and their actual utilization compared to White male-owned businesses. More rigorous studies also examine the elements of the agency’s program to determine whether it is sufficiently narrowly tailored. The following is a detailed discussion of the legal parameters and the requirements for conducting studies to support legally defensible programs.

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43. *Engineering Contractors II*, 122 F.3d at 916.

44. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10<sup>th</sup> Cir. 2003), *cert. denied*, 540 U.S. 1027 (10<sup>th</sup> Cir. 2003) (“*Concrete Works IV*”).

45. *H.B. Rowe Co., Inc. v. W. Lyndo Tippet, North Carolina DOT, et al.*, 615 F.3d 233, 241-242 (4<sup>th</sup> Cir. 2010); *Midwest Fence Corp. v. U.S. Department of Transportation, Illinois Department of Transportation, Illinois State Toll Highway Authority*, 84 F. Supp. 3d 705 (N.D. Ill. 2015) (“*Midwest Fence I*”), *aff’d* 840 F.3d 932 (7<sup>th</sup> Cir. 2016) (“*Midwest Fence II*”).

46. *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 970 (8<sup>th</sup> Cir. 2003), *cert. denied*, 541 U.S. 1041 (2004).

47. *Coral Construction*, 941 F. 2d at 921; *Engineering Contractors II*, 122 F.3d at 916.

48. *Adarand VII*, 228 F.3d at 1166; *Engineering Contractors II*, 122 F.3d at 916; *Concrete Works II*, 36 F.3d at 1513, 1522-1523; *Webster v. Fulton County, Georgia*, 51 F.Supp.2d 1354, 1364 (N.D. Ga. 1999), *aff’d per curiam*, 218 F. 3d 1267 (11<sup>th</sup> Cir. 2000); *see also Wygant v. Jackson Board of Education*, 476 U.S. 267, 277-278 (1986).

## B. Elements of Strict Constitutional Scrutiny

In its decision in *City of Richmond v. J.A. Croson Co.*, the United States Supreme Court established the constitutional contours of permissible race-based public contracting programs. Reversing long established Equal Protection jurisprudence,<sup>49</sup> the Court, for the first time, extended the highest level of judicial examination from measures designed to limit the rights and opportunities of minorities to legislation that inures to the benefit of these victims of historic, invidious discrimination. Strict scrutiny requires that a government entity prove both its “compelling governmental interest” in remediating identified discrimination based upon “strong evidence”<sup>50</sup> and that the measures adopted to remedy that discrimination are “narrowly tailored” to that evidence. However benign the government’s motive, race is always so suspect a classification that its use must pass the highest constitutional test of “strict scrutiny”.

The Court struck down the City of Richmond’s Minority Business Enterprise Plan (“Plan”) because it failed to satisfy the strict scrutiny analysis applied to “race-based” government programs. The City’s “setaside” Plan required prime contractors awarded City construction contracts to subcontract at least 30% of the dollar amount of contracts to one or more Minority-Owned Business Enterprises (“MBEs”).<sup>51</sup> A business located anywhere in the nation was eligible to participate so long as it was at least 51% owned and controlled by minority citizens or lawfully-admitted permanent residents.

The Plan was adopted following a public hearing during which no direct evidence was presented that the City had discriminated on the basis of race in contracts or that its prime contractors had discriminated against minority subcontractors. The only evidence before the City Council was: (a) Richmond’s population was 50% Black, yet less than one percent of its prime construction contracts had been awarded to minority businesses; (b) local contractors’ associations were virtually all White; (c) the City Attorney’s opinion that the Plan was constitutional; and (d) generalized statements describing widespread racial discrimination in the local, Virginia, and national construction industries.

In affirming the court of appeals’ determination that the Plan was unconstitutional, Justice Sandra Day O’Connor’s plurality opinion rejected the extreme positions that local governments either have *carte blanche* to enact race-based legislation or must prove their own active participation in discrimination:

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49. U.S. Const. Amend. XIV, §1.

50. There is no precise mathematical formula to assess what rises to the level of “strong evidence”.

51. The City described its Plan as remedial. It was enacted to promote greater participation by minority business enterprises in public construction projects.

[A] state or local subdivision...has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction.... [Richmond] can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment...[I]f the City could show that it had essentially become a “passive participant” in a system of racial exclusion ...[it] could take affirmative steps to dismantle such a system.<sup>52</sup>

Strict scrutiny of race-based remedies is required to determine whether racial classifications are in fact motivated by notions of racial inferiority or blatant racial politics. This highest level of judicial review “smokes out” illegitimate uses of race by ensuring that the legislative body is pursuing an important enough goal to warrant use of a highly suspect tool.<sup>53</sup> It also ensures that the means chosen “fit” this compelling goal so closely that there is little or no likelihood that the motive for the classification was illegitimate racial prejudice or stereotype. The Court made clear that strict scrutiny is designed to expose racial stigma; racial classifications are said to create racial hostility if they are based on notions of racial inferiority.

Richmond’s evidence was found to be lacking in every respect.<sup>54</sup> The City could not rely upon the disparity between its utilization of MBE prime contractors and Richmond’s minority population because not all minority persons would be qualified to perform construction projects; general population representation is irrelevant. No data were presented about the availability of MBEs in either the relevant market area or their utilization as subcontractors on City projects.

According to Justice O’Connor, the extremely low MBE membership in local contractors’ associations could be explained by “societal” discrimination or perhaps Blacks’ lack of interest in participating as business owners in the construction industry. To be relevant, the City would have to demonstrate statistical disparities between eligible MBEs and actual membership in trade or professional groups. Further, Richmond presented no evidence concerning enforcement of its own anti-discrimination ordinance. Finally, the City could not rely upon Congress’ determination that there has been nationwide discrimination in the construction industry. Congress recognized that the scope of the problem varies from market to market, and, in any event, it was exercising its powers under Section Five of the Fourteenth Amendment. Local governments are further constrained by the Amendment’s Equal Protection Clause.

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52. 488 U.S. at 491-92.

53. See also *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.”).

54. The City cited past discrimination and its desire to increase minority business participation in construction projects as the factors giving rise to the Plan.

In the case at hand, the City has not ascertained how many minority enterprises are present in the local construction market nor the level of their participation in City construction projects. The City points to no evidence that qualified minority contractors have been passed over for City contracts or subcontracts, either as a group or in any individual case. Under such circumstances, it is simply impossible to say that the City has demonstrated “a strong basis in evidence for its conclusion that remedial action was necessary.”<sup>55</sup>

This analysis was applied only to Blacks. The Court emphasized that there was “absolutely no evidence” of discrimination against other minorities. “The random inclusion of racial groups that, as a practical matter, may have never suffered from discrimination in the construction industry in Richmond, suggests that perhaps the City’s purpose was not in fact to remedy past discrimination.”<sup>56</sup>

Having found that Richmond had not presented evidence in support of its compelling interest in remediating discrimination—the first prong of strict scrutiny—the Court made two observations about the narrowness of the remedy—the second prong of strict scrutiny. First, Richmond had not considered race-neutral means to increase MBE participation. Second, the 30% quota had no basis in evidence, and was applied regardless of whether the individual MBE had suffered discrimination.<sup>57</sup> The Court noted that the City “does not even know how many MBEs in the relevant market are qualified to undertake prime or subcontracting work in public construction projects.”<sup>58</sup>

Recognizing that her opinion might be misconstrued to eliminate all race-conscious contracting efforts, Justice O’Connor closed with these admonitions:

Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the City of Richmond had evidence before it that non-minority contractors were systematically excluding minority businesses from subcontracting opportunities, it could take action to end the discriminatory exclusion. Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise. Under such circumstances, the City could act to dismantle the closed business system by taking appropriate measures against those who discriminate

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55. *Croson*, 488 U.S. at 510.

56. *Id.*

57. *See Grutter*, 529 U.S. at 336-337 (quotas are not permitted; race must be used in a flexible, non-mechanical way).

58. *Croson*, 488 U.S. at 502.

based on race or other illegitimate criteria. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.... Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified.<sup>59</sup>

While much has been written about *Croson*, it is worth stressing what evidence was, and was not, before the Court. First, Richmond presented *no* evidence regarding the availability of MBEs to perform as prime contractors or subcontractors and *no* evidence of the utilization of minority-owned subcontractors on City contracts.<sup>60</sup> Nor did Richmond attempt to link the remedy it imposed to any evidence specific to the program; it used the general population of the City rather than any measure of business availability.

Some commentators have taken this dearth of any particularized proof and argued that only the most particularized proof can suffice in all cases. They leap from the Court's rejection of Richmond's reliance on only the percentage of Blacks in the City's population to a requirement that only firms that bid or have the "capacity" or "willingness" to bid on a particular contract at a particular time can be considered in determining whether discrimination against Black businesses infects the local economy.<sup>61</sup>

This argument has been rejected explicitly by some courts. In denying the plaintiff's summary judgment motion to enjoin the City of New York's Minority- and Woman-Owned Business Enterprise ("M/WBE") construction ordinance, the court stated:

[I]t is important to remember what the *Croson* plurality opinion did and did not decide. The Richmond program, which the *Croson* Court struck down, was insufficient because it was based on a comparison of the minority population in its entirety in Richmond, Virginia (50%) with the number of contracts awarded to minority businesses (0.67%). There were no statistics presented regarding the number of minority-owned contractors in the Richmond area, *Croson*, 488 U.S. at 499, and the Supreme Court was concerned with the gross generality of the statistics used in justifying the Richmond program. There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under *Croson*.<sup>62</sup>

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59. *Id.* at 509 (citations omitted).

60. *Id.* at 502.

61. *See, for example, Northern Contracting III*, 473 F.3d at 723.



Further, Richmond made no attempt to narrowly tailor a goal for the procurement at issue that reflected the reality of the project. Arbitrary quotas, and the unyielding application of those quotas, did not support the stated objective of ensuring equal access to City contracting opportunities. The *Croson* Court said nothing about the constitutionality of flexible goals based upon the availability of MBEs to perform the scopes of the contract in the government's local market area. In contrast, the USDOT DBE program avoids these pitfalls. 49 C.F.R. Part 26 "provides for a flexible system of contracting goals that contrasts sharply with the rigid quotas invalidated in *Croson*."

While strict scrutiny is designed to require clear articulation of the evidentiary basis for race-based decision-making and careful adoption of remedies to address discrimination, it is not, as Justice O'Connor stressed, an impossible test that no proof can meet. Strict scrutiny need not be "fatal in fact".

## **C. Establishing a "Strong Basis in Evidence" for Travis County's Program for Historically Underutilized Businesses**

The case law on the U.S. Department of Transportation's DBE program should guide the County's program for its locally funded contracts. Whether the program is called an M/WBE program or a DBE program or any other moniker, the strict scrutiny test applies. The DBE program regulations<sup>63</sup> have been upheld by every court<sup>64</sup>, and local programs for Minority- and Woman-Owned Business Enterprises will be judged against the following legal framework.<sup>65</sup>

All courts have held that Congress had strong evidence of widespread racial discrimination in the construction industry. This included:

- Disparities between the earnings of minority-owned firms and similarly situated non-minority owned firms;

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62. *North Shore Concrete and Associates, Inc. v. City of New York*, 1998 U.S. Dist. Lexis 6785, \*28-29 (E.D. N.Y. 1998); see also *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 61-62 (2<sup>nd</sup> Cir. 1992) ("Croson made only broad pronouncements concerning the findings necessary to support a state's affirmative action plan"); cf. *Concrete Works II*, 36 F.3d at 1528 (City may rely on "data reflecting the number of MBEs and WBEs in the marketplace to defeat the challenger's summary judgment motion").

63. 49 C.F.R. Part 26.

64. See, for example, *Midwest Fence II*, 840 F.3d at 932; *Northern Contracting III*, 473 F.3d at 715; *Associated General Contractors of America, San Diego Chapter, Inc., v. California Department of Transportation, et al.*, 713 F.3d 1187, 1198 (9<sup>th</sup> Cir. 2013); *Western States*, 407 F.3d at 983, 994; *Adarand VII*, 228 F.3d at 1147; *M.K. Weeden Construction v. Montana Department of Transportation*, 2013 WL 4774517 (D. Mont.) (September 4, 2013).

65. *Midwest Fence II*, 840 F.3d. at 953.

- Disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners;
- The large and rapid decline in minorities' participation in the construction industry when affirmative action programs were struck down or abandoned; and
- Various types of overt and institutional discrimination by prime contractors, trade unions, business networks, suppliers, and sureties against minority contractors.<sup>66</sup>

The regulations were facially narrowly tailored.

- The overall goal must be based upon demonstrable evidence of the number of ready, willing, and able DBEs.
- The goal may be adjusted to reflect the availability of DBEs "but for" the effects of the DBE program and of discrimination.
- The recipient must meet the maximum feasible portion of the goal through race-neutral measures.
- The use of quotas and set-asides is limited to only those situations where there is no other remedy.
- The overall, triennial goals are to be adjusted during the year to remain narrowly tailored.
- The presumption of social disadvantage for racial and ethnic minorities and women is rebuttable, "wealthy minority owners and wealthy minority firms are excluded, and certification is available to persons who are not presumptively disadvantaged but can demonstrate actual social and economic disadvantage."<sup>67</sup>

As previously noted, programs for veterans, persons with disabilities, preferences based on geographic location or truly race- and gender-neutral small business efforts are not subject to strict scrutiny but rather the lower level of scrutiny called "rational basis". Therefore, no evidence comparable to that in a disparity study is needed to enact such initiatives.

It is well established that disparities between an agency's utilization of M/WBEs and their availability in the relevant marketplace provide a sufficient basis for the consideration of race- or gender-conscious remedies. Proof of the disparate impacts of economic factors such as access to capital and bonding on M/WBEs<sup>68</sup> and the disparate treatment of such firms by actors critical to their success will

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66. *Western States*, 407 F.3d at 992-93.

67. *Sherbrooke*, 345 F.3d. at 973.

meet strict scrutiny. Discrimination must be shown using statistics and economic models to examine the effects of systems or markets on different groups, as well as by evidence of personal experiences with discriminatory conduct, policies or systems.<sup>69</sup> Specific evidence of discrimination or its absence may be direct or circumstantial and should include economic factors and opportunities in the private sector affecting the success of M/WBEs.<sup>70</sup> A stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces, has been held to support the use of race-conscious goals.<sup>71</sup>

*Croson's* admonition that "mere societal" discrimination is not enough to meet strict scrutiny is met where the government presents evidence of discrimination in the industry targeted by the program. "If such evidence is presented, it is immaterial for constitutional purposes whether the industry discrimination springs from widespread discriminatory attitudes shared by society or is the product of policies, practices, and attitudes unique to the industry... The genesis of the identified discrimination is irrelevant." There is no requirement to "show the existence of specific discriminatory policies and that those policies were more than a reflection of societal discrimination."<sup>72</sup>

The County need not prove that it is itself guilty of discrimination to meet its burden. In upholding Denver's M/WBE construction program, the Tenth Circuit stated that Denver can show its compelling interest by "evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination...[by] linking its spending practices to the private discrimination."<sup>73</sup> Denver further linked its award of public dollars to discriminatory conduct through the testimony of M/WBEs that identified general contractors who used them on City projects with M/WBE goals but refused to use them on private projects without goals.

The following are the necessary disparity study elements to determine the constitutional validity of race- and gender-conscious local programs. Programs based upon studies similar to the methodology employed for this Report have been deemed a rich and relevant source of data and have been upheld repeatedly. This includes the availability analysis and the examination of disparities in the business

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68. *Northern Contracting, Inc. v. Illinois Department of Transportation, et al*, 2005 U.S. Dist. LEXIS 19868 at \*69 (Sept. 8, 2005) ("*Northern Contracting II*").

69. *Adarand VII*, 228 F.3d at 1166 ("statistical and anecdotal evidence are appropriate").

70. *Id.*

71. *Northern Contracting II* at 80 ("the stark disparity in DBE participation rates on goals and non-goals contracts, when combined with the statistical and anecdotal evidence of discrimination in the relevant marketplaces" indicates the presence of discrimination); see *Croson*, 488 U.S. at 492.

72. *Concrete Works IV*, 321 F.3d at 976.

73. *Id.* at 977.

formation rates and business earnings of minorities and women compared to similarly situated non-minority males.<sup>74</sup>

## **1. Define Travis County's Market Area**

The first step is to determine the market area in which the County operates. *Croson* states that a state or local government may only remedy discrimination within its own contracting market area. The City of Richmond was specifically faulted for including minority contractors from across the country in its program, based on national data considered by Congress.<sup>75</sup> Travis County must therefore empirically establish the geographic and product dimensions of its contracting and procurement market area to ensure that the program meets strict scrutiny. This is a fact driven inquiry; it may or may not be the case that the market area is the government's jurisdictional boundaries.<sup>76</sup> This Study employs long established economic principles to empirically establish the County's geographic and product market area to ensure that any program based on the Study satisfies strict scrutiny.

A commonly accepted definition of geographic market area for disparity studies is the locations that account for at least 75% of the agency's contract and subcontract dollar payments.<sup>77</sup> Likewise, the accepted approach is to analyze those detailed industries that make up at least 75% of the prime contract and associated subcontract payments for the study period.<sup>78</sup> This produces the utilization results within the geographic market area.

## **2. Determine Travis County's Utilization of Minority- and Woman-Owned Businesses**

The study should next determine the County's utilization of minority- and woman-owned businesses ("M/WBEs/HUBs") in its market area. Generally, this analysis should be limited to formally procured contracts, since it is unlikely that it is realistic or useful to set goals on small dollar purchases.

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74. The Illinois Department of Transportation's ("IDOT's") DBE program was upheld based on this approach combined with other economy-wide and anecdotal evidence. IDOT's plan was based upon sufficient proof of discrimination such that race-neutral measures alone would be inadequate to assure that DBEs operate on a "level playing field" for government contracts. *Northern Contracting III*, 473 F.3d at 720. The USDOT's institutional guidance for Part 26 refers approvingly to this case. [https://www.transportation.gov/sites/dot.gov/files/docs/Western\\_States\\_Paving\\_Company\\_Case\\_Questions\\_and\\_Answers.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/Western_States_Paving_Company_Case_Questions_and_Answers.pdf).

75. *Croson*, 488 U.S. at 508.

76. *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore "economic reality").

77. J. Wainwright and C. Holt, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, National Academies of Sciences, Engineering, and Medicine, 2010 ("*National Disparity Study Guidelines*").

78. *Id.*

Developing the file for analysis involves the following steps, regardless of funding source:

1. Develop the Initial Contract Data File. This involves first gathering Travis County's records of its payments to prime contractors, and if available, associated subcontractors.
2. Develop the Sample Contract Data File, if necessary. If the Initial Contract Data File is too large to complete all the missing contract records, a sample should be drawn. Standard statistical procedures should be utilized that result in a sample whose basic parameters (distribution of the number of contracts and the value of contract dollars) mirror the broad industry sectors (*i.e.*, construction; construction-related services; goods; and services) in the Initial Contract Data File. In addition, the total number of contracts must allow for a statistically representative sample at the 95% confidence level and a five percent confidence interval. These parameters are the norm in statistical sample procedures.
3. Develop the Final Contract Data File. Whatever data are missing (often race and gender ownership, North American Industry Classification System ("NAICS") or other industry codes, work descriptions or other important information not collected by the agency) must be fully reconstructed by the consultant. While painstaking and labor intensive, this step cannot be skipped. Using surveys is unlikely to yield sufficient data, and so each contract must be examined, and the record completed to ensure a full and accurate picture of the agency's activities. It is also important to research whether a firm that has an address outside the market area has a location in the market area (contract records often have far flung addresses for payments). All necessary data for at least 80% of the contract dollars in the final contract data files should be collected to ensure a comprehensive file that mirrors the County's contracting and procurement activities.
4. Determining the Geographic Market. The federal courts require that a government agency narrowly tailor its race- and gender-conscious contracting program elements to its geographic market area.<sup>79</sup> This element of the analysis must be empirically established<sup>80</sup> and the accepted approach is to analyze those detailed industries, as defined by

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79. *Crosen*, 488 U.S. at 508 (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program); *see* 49 C.F.R. §26.45(c); <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> ("D. Explain How You Determined Your Local Market Area.... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.").

80. *Concrete Works II*, 36 F.3d at 1520 (to confine data to strict geographic boundaries would ignore "economic reality").

6-digit NAICS codes, that make up at least 75% of the prime contract and subcontract payments for the study period.<sup>81</sup>

### **3. Determine the Availability of Minority- and Woman-Owned Businesses in Travis County's Market Area**

Next, the study must estimate the availability of minorities and women in the County's market area to participate in the County's contracts as prime contractors and associated subcontractors. Based on the product and geographic utilization data, the study should calculate unweighted and weighted M/WBE/HUB availability estimates of ready, willing and able firms in the County's market. These results will be a narrowly tailored, dollar-weighted average of all the underlying industry availability numbers; larger weights will be applied to industries with relatively more spending and lower weights applied to industries with relatively less spending. The availability figures should be sub-divided by race, ethnicity, and gender.

The availability analysis involves the following steps:

1. The development of the Merged Business Availability List. Three data sets are used to develop the Merged Business Availability List:
  - The firms in the M/W/DBE Master Directory developed for Travis County. This methodology includes both certified firms and non-certified firms owned by minorities or women.<sup>82</sup> The Master Directory consists of all available government and private D/M/WBE directories, limited to firms within the County's geographic and product market.
  - The firms contained in the County's contract data files. This will require the elimination of any duplications because a firm might have received more than one contract for work in a given NAICS code during the study period.
  - Firms extracted from the Dun & Bradstreet MarketPlace/Hoovers database, using the relevant geographic and product market definitions.
2. The estimation of unweighted availability. The Merged Business Availability List will be the available universe of relevant firms for the study. This process will significantly improve the identification of minority-owned and woman-owned businesses in the business population. Race and sex must be assigned to any firm not already classified.<sup>83</sup> This will produce estimates of minority and woman business

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81. See *National Disparity Study Guidelines*, at 29-30.

82. *Id.* at 33-34.

availability in the County's markets for each NAICS code in the product market; for woman and minority business availability for all NAICS codes combined; and for the broad industry categories of goods, services and construction. The detailed results should also be the basis for contract specific goal setting methodology.

3. The estimation of weighted availability. Using the weights from the utilization analysis, the unweighted availability should be adjusted for the share of the County's spending in each NAICS code. The unweighted availability determination will be weighted by the share of dollars the County actually spends in each NAICS code, derived from the utilization analysis. These resulting weighted availability estimates will be used in the calculation of disparity indices for Travis County's contracts.

This adjustment is important for two reasons. First, disparity analyses compare utilization and availability. The utilization metrics are shares of dollars. The unweighted availability metrics are shares of firms. In order to make comparable analyses, the dollar shares are used to weight the unweighted availability. Second, any examination of the County's overall usage of available firms must be conducted with an understanding of what NAICS codes received what share of agency spending. Absent this, a particular group's availability share (high or low) in an area of low spending would carry equal weight to a particular group's availability share (high or low) in an area of large spending.

This three-part methodology for estimating availability is usually referred to as the "custom census" approach with refinements. This approach is favored for several reasons. As recognized by the courts and the *National Disparity Study Guidelines*,<sup>84</sup> this methodology in general is superior to the other methods for at least four reasons.

- First, it provides an internally consistent and rigorous "apples to apples" comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (*e.g.*, certified M/WBEs or firms that respond to a survey) and the denominator (*e.g.*, registered vendors or the Census Bureau's County Business Patterns data).
- Second, by examining a comprehensive group of firms, it "casts a broader net" beyond those known to the agency. As held by the federal court of

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83. We note this is an improvement over the approach described in the *National Disparity Study Guidelines*, which recommended a survey to assign classifications. While it is more labor intensive to actually assign race, gender and industry code to each firm than using a mathematical formula derived from survey results, it greatly improves the accuracy of the assignments, resulting in more narrowly tailored results.

84. *National Disparity Study Guidelines*, at 57-58.

appeals in finding the Illinois Department of Transportation's program to be constitutional, the "remedial nature of [DBE programs] militates in favor of a method of D/M/W/SBE availability calculation that casts a broader net" than merely using bidders lists or other agency or government directories. A broad methodology is also recommended by the USDOT for the federal DBE program, which has been upheld by every court.<sup>85</sup> A custom census is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders lists, because it seeks out firms in the agency's market areas that have not been able to access its opportunities.

- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Several courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that minority and woman firms may be smaller, newer, and otherwise less competitive than non-M/WBEs because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these "capacity" factors are the *outcomes* of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as "control" variables in a disparity study.<sup>86</sup>
- Fourth, this methodology has been upheld by every court that has reviewed it, including in the failed challenge to the Illinois Department of Transportation's DBE program<sup>87</sup> and most recently in the successful defense of the Illinois State Toll Highway's DBE program.<sup>88</sup>

Other methodologies relying only on vendor or bidder lists may overstate or understate availability as a proportion of the County's actual markets because they reflect only the results of the agency's own activities, not an accurate portrayal of marketplace behavior. Other methods of whittling down availability by using assumptions based on surveys with limited response rates or guesses about firms' capacities easily lead to findings that woman and minority businesses no longer face discrimination or are unavailable, even when the firm is actually working on agency contracts.

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85. See *Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program*, [https://www.transportation.gov/sites/dot.gov/files/docs/Tips\\_for\\_Goal-Setting\\_in\\_DBE\\_Program\\_20141106.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/Tips_for_Goal-Setting_in_DBE_Program_20141106.pdf).

86. For a detailed discussion of the role of capacity in disparity studies, see the *National Disparity Study Guidelines*, Appendix B, "Understanding Capacity."

87. *Northern Contracting III*, 473 F.3d at 721.

88. See generally *Midwest Fence* 840 F.3d 932; *Northern Contracting III*, 473 F.3d 715.



Many plaintiffs have tried to argue that studies must somehow control for “capacity” of M/WBEs to perform specific agency contracts. The definition of “capacity” has varied based upon the plaintiff’s particular point of view, but it has generally meant firm age, firm size (full time employees), firm revenues, bonding limits and prior experience on agency projects (no argument has been made outside of the construction industry).

This test has been rejected by the courts when directly addressed by the plaintiff and the agency. As recognized by the courts and the *National Disparity Study Guidelines*, these capacity factors are not race- and gender-neutral variables. Discriminatory barriers depress the formation rates of firms by minorities and women and the rates of success of such firms in doing business in both the private and public sectors. In a perfectly discriminatory system, M/WBEs would have no “capacity” because they would have been prevented from developing any “capacity”. That certainly would not mean that there was no discrimination or that the government must sit by helplessly and continue to award tax dollars within the “market failure” of discrimination and without recognition of systematic, institutional race- and gender-based barriers. It is these types of “capacity” variables where barriers to full and fair opportunities to compete will be manifested. Capacity limitations on availability would import the current effects of past discrimination into the model, because if M/WBEs are newer or smaller because of discrimination, then controlling for those variables will mask the phenomenon of discrimination that is being studied. In short, identifiable indicators of capacity are themselves impacted and reflect discrimination. The courts have agreed. Based on expert testimony, judges understand that factors such as size and experience reflect outcomes influenced by race and gender: “M/WBE construction firms are generally smaller and less experienced *because* of discrimination.”<sup>89</sup>

To rebut this framework, a plaintiff must proffer its own study showing that the disparities disappear when whatever variables it believes are important are held constant and that controlling for firm specialization explained the disparities.<sup>90</sup> Significantly, *Croson* does not “require disparity studies that measure whether construction firms are able to perform a *particular contract*.”<sup>91</sup>

There are also practical reasons not to circumscribe availability through “capacity” limitations. First, there is no agreement concerning what variables are relevant or how those variables are to be measured for the purpose of examining whether race and gender barriers impede the success of minority

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89. *Concrete Works IV*, 321 F.3d at 983 (emphasis in the original).

90. Conjecture and unsupported criticism of the government are not enough. The plaintiff must rebut the government’s evidence and introduce “credible, particularized evidence” of its own. See *Midwest Fence II*, 840 F.3d at 942 (upholding the Illinois Tollway’s program for state funded contracts modeled after Part 26 and based on CHA’s expert testimony).

91. *Croson*, 488 U.S. at 508 (emphasis in the original).

and woman entrepreneurs. For example, a newly formed firm might be the result of a merger of much older entities or have been formed by highly experienced owners; it is unclear how such variations would shed light on the issues in a disparity study. Second, since the amount of necessary capacity will vary from contract to contract, there is no way to establish universal standards that would satisfy the capacity limitation. Third, firms' capacities are highly elastic. Businesses can add staff, rent equipment, hire subcontractors or take other steps to be able to perform a particular scope on a particular contract. Whatever a firm's capacity might have been at the time of the study, it may well have changed by the time the agency seeks to issue a specific solicitation. Fourth, there are no reliable data sources for the type of information usually posited as important by those who seek to reduce availability estimates using capacity factors. While a researcher might have information about firms that are certified as M/WBEs or that are prequalified by an agency (which usually applies only to construction firms), there is no database for that information for non-certified firms, especially White male-owned firms that usually function as subcontractors. Any adjustment to the numerator (M/WBEs) must also be made to the denominator (all firms), as a researcher cannot assume that all White male-owned firms have adequate capacity but that M/WBEs do not.

Capacity variables should be examined at the economy-wide level of business formation and earnings, discussed in Chapter V, not at the first stage of the analysis. To import these variables into the availability determination would confirm the downward bias that discrimination imposes on M/WBEs' availability and the upward bias enjoyed by non-M/WBEs. These factors should also be explored during anecdotal data collection, discussed in Chapter VI. They are also relevant to contract goal setting, where the agency must use its judgment about whether to adjust the initial goal that results from the study data based on current market conditions and current firm availability, discussed in Chapter IV.

#### **4. Examine Disparities between Travis County's Utilization of Minority- and Woman-Owned Businesses and the Availability of Minority- and Woman-Owned Businesses**

A disparity study for a local government must analyze whether there are statistically significant disparities between the availability of M/WBE/HUBs and their utilization on agency contracts.

Where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion

could arise... In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.<sup>92</sup>

This is known as the “disparity ratio” or “disparity index”. A disparity ratio measures the participation of a group in the government’s contracting opportunities by dividing that group’s utilization by the availability of that group and multiplying that result by 100. Courts have looked to disparity indices in determining whether strict scrutiny is satisfied.<sup>93</sup> An index of less than 100% indicates that a given group is being utilized less than would be expected based on its availability.

The courts have held that disparity results must be analyzed to determine whether the results are “significant”. There are two distinct methods to measure a result’s significance. First, a “large” or “substantively significant” disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. This is based on the Equal Employment Opportunity Commission’s “Eighty Percent Rule” that a ratio less than 80% presents a *prima facie* case of discrimination by supporting the inference that the result may be caused by the disparate impacts of discrimination.<sup>94</sup> Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.<sup>95</sup> A more in-depth discussion of statistical significance is provided in Appendix C.

In addition to creating the disparity ratio, correct measures of availability are necessary to determine whether discriminatory barriers depress the formation of firms by minorities and women, and the success of such firms in doing business in both the private and public sectors, known as an “economy-wide” disparity analysis.<sup>96</sup>

The County need not prove that the statistical inferences of discrimination are “correct”. In upholding Denver’s M/WBE Program, the Tenth Circuit noted that strong evidence supporting Denver’s determination that remedial action was

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92. *Croson*, 488 U.S. at 509; see *Webster*, 51 F.Supp.2d at 1363, 1375.

93. *W. H. Scott Construction*, 199 F.3d at 218; see also *Concrete Works II*, 36 F.3d at 1526-1527; *O’Donnell Construction Co., Inc. v. State of Columbia*, 963 F.2d 420, 426 (D.C. Cir. 1992); *Cone Corporation v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990).

94. 29 C.F.R. §1607.4(D) (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”); see *Engineering Contractors II*, 122 F3d at 914.

95. A chi-square test – examining if the utilization rate was different from the weighted availability - is used to determine the statistical significance of the disparity ratio.

96. *Northern Contracting II*, 2005 U.S. Dist. LEXIS 19868 at \*69 (IDOT’s custom census approach was supportable because “discrimination in the credit and bonding markets may artificially reduce the number of M/WBEs”).

necessary need not have been based upon “irrefutable or definitive” proof of discrimination. Statistical evidence creating inferences of discriminatory motivations was sufficient and therefore evidence of market area discrimination was properly used to meet strict scrutiny. To rebut this type of evidence, the plaintiff must prove by a preponderance of the evidence that such proof does not support those inferences.<sup>97</sup>

Nor must the County demonstrate that the “ordinances will *change* discriminatory practices and policies” in the local market area; such a test would be “illogical” because firms could defeat the remedial efforts simply by refusing to cease discriminating.<sup>98</sup>

The County need not prove that private firms directly engaged in any discrimination in which the government passively participates do so intentionally, with the purpose of disadvantaging minorities and women.

Denver’s only burden was to introduce evidence which raised the inference of discriminatory exclusion in the local construction industry and link its spending to that discrimination.... Denver was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or minorities. To impose such a burden on a municipality would be tantamount to requiring proof of discrimination and would eviscerate any reliance the municipality could place on statistical studies and anecdotal evidence.<sup>99</sup>

Similarly, statistical evidence by its nature cannot identify the individuals responsible for the discrimination; there is no need to do so to meet strict scrutiny, as opposed to an individual or class action lawsuit.<sup>100</sup>

## **5. Analyze Economy-Wide Evidence of Race- and Gender-Based Disparities in Travis County’s Market**

The courts have repeatedly held that analysis of disparities in the rates at which M/WBEs in the government’s markets form businesses compared to similar non-M/WBEs, their earnings from such businesses, and their access to capital markets are highly relevant to the determination of whether the market functions properly for all firms regardless of the race or gender of their

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97. *Concrete Works IV*, 321 F. 3d at 971.

98. *Id.* at 973 (emphasis in the original).

99. *Id.* at 971.

100. *Id.* at 973.

ownership. These analyses contributed to the successful defense of Chicago's construction program.<sup>101</sup> As similarly explained by the Tenth Circuit, this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs.... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.<sup>102</sup>

Business discrimination studies and lending formation studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. "Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates that M/WBEs are precluded *at the outset* from competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* M/WBEs are precluded from competing for public contracts."<sup>103</sup> Despite the contentions of plaintiffs that possibly dozens of factors might influence the ability of any individual to succeed in business, the courts have rejected such impossible tests and held that business formation studies are not flawed because they cannot control for subjective descriptions such as "quality of education", "culture" and "religion".<sup>104</sup>

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101. *Builders Ass'n of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725, 740 (N.D. Ill. 2003) ("BAGC").

102. *Adarand VII*, 228 F.3d at 1147, 1167-68.

103. *Id.*

104. *Concrete Works IV*, 321 F.3d at 980.

For example, in unanimously upholding the DBE Program for federal-aid transportation contracts, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.<sup>105</sup> The Eighth Circuit Court of Appeals took a “hard look” at the evidence Congress considered, and concluded that the legislature had

spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry. In rebuttal, [the plaintiffs] presented evidence that the data were susceptible to multiple interpretations, but they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to and participation in highway contracts. Thus, they failed to meet their ultimate burden to prove that the DBE program is unconstitutional on this ground.<sup>106</sup>

This analysis is especially useful for an agency such as Travis County which has been implementing a race- and gender-conscious program for many years, which might partially ameliorate market wide barriers through the use of contracting diversity tools.

## **6. Evaluate Anecdotal Evidence of Race- and Gender-Based Barriers to Equal Opportunities in Travis County’s Market**

A study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities because it is relevant to the question of whether observed statistical disparities are due to discrimination and not to some other non-discriminatory cause or causes. As observed by the Supreme Court, anecdotal evidence can be persuasive because it “brought the cold [statistics] convincingly to life.”<sup>107</sup> Testimony about discrimination practiced by prime contractors, bonding companies, suppliers, and lenders has been found relevant regarding barriers both to minority firms’ business formation and to

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105. *Id.*; *Western States*, 407 F.3d at 993; *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2004 U.S. Dist. LEXIS 3226 at \*64 (N.D. Ill., Mar. 3, 2004) (“*Northern Contracting I*”).

106. *Sherbrooke*, 345 F.3d. at 970; *see also, Adarand VII*, 228 F.3d at 1175 (Plaintiff has not met its burden “of introducing credible, particularized evidence to rebut the government’s initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market.”).

107. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

their success on governmental projects.<sup>108</sup> While anecdotal evidence is insufficient standing alone, “[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government’s] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative.”<sup>109</sup> “[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough.”<sup>110</sup>

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it ‘is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>111</sup> Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>112</sup>

## D. Narrowly Tailoring a HUB Program for Travis County

Even if the County has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must still be narrowly tailored to that evidence. As discussed above, programs that closely mirror those of the USDOT DBE Program<sup>113</sup> have been upheld using that framework.<sup>114</sup> The courts have repeatedly examined the following factors in

108. *Adarand VII*, 228 F.3d at 1168-1172.

109. *Concrete Works II*, 36 F.3d at 1520,1530.

110. *Engineering Contractors of South Florida v. Metropolitan Dade County*, 943 F. Supp. 1546 (S.D. Fla. 1996) (“*Engineering Contractors I*”) 488 U.S. 488 U.S. 488 U.S.. This case is one of the leading lower court cases on the sufficiency of anecdotal evidence to meet the compelling interest requirement. The record contained anecdotal complaints of discrimination by M/WBEs which described incidents in which suppliers quoted higher prices to M/WBEs than to their non-M/WBE competitors, and in which non-M/WBE prime contractors unjustifiably replaced the M/WBE subcontractor with a non-MWBE subcontractor.

111. *Id.* at 1579-1580.

112. *Concrete Works IV*, 321 F.3d at 989.

113. 49 C.F.R. Part 26.

114. *See, e.g., Midwest Fence II*, 840 F.3d at 953 (upholding the Illinois Tollway’s program for state funded contracts modelled after Part 26 and based on CHA’s expert testimony).

determining whether race-based remedies are narrowly tailored to achieve their purpose:

- The necessity of relief;<sup>115</sup>
- The efficacy of race- and gender-neutral remedies at overcoming identified discrimination;<sup>116</sup>
- The relationship of numerical benchmarks for government spending to the availability of minority- and woman-owned firms and to subcontracting goal setting procedures;<sup>117</sup>
- The flexibility of the program requirements, including the provision for good faith efforts to meet goals and contract specific goal setting procedures;<sup>118</sup>
- The relationship of numerical goals to the relevant market;<sup>119</sup>
- The impact of the relief on third parties;<sup>120</sup> and
- The overinclusiveness of racial classifications.<sup>121</sup>

## **1. Consider Race- and Gender-Neutral Remedies**

Race- and gender-neutral approaches are necessary components of a defensible and effective M/WBE program<sup>122</sup>. The failure to seriously consider such remedies has proven fatal to several programs.<sup>123</sup> Difficulty in accessing procurement opportunities, restrictive bid specifications, excessive experience requirements, and overly burdensome insurance and/or bonding requirements, for example, might be addressed by the County without resorting to the use of race or gender in its decision-making. Effective remedies include unbundling of contracts into smaller units, providing technical support, and

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115. *Croson*, 488 U.S. at 507; *Adarand III*, 515 U.S. at 237-238.

116. *Paradise*, 480 U.S. at 171.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Croson*, 488 U.S. at 506.

121. *Paradise*, 480 U.S. at 171 ; *see also*, *Sherbrooke*, 345 F.3d at 971-972.

122. *Croson*, 488 U.S. at 507 (Richmond considered no alternatives to race-based quota); *Associated General Contractors of Ohio v. Drabik*, 214 F.3d 730, 738 (6<sup>th</sup> Cir. 2000) (“*Drabik II*”); *Contractors Association of Eastern Pennsylvania v. City of Philadelphia*, 91 F.3d 586, 609 (3<sup>rd</sup> Cir. 1996) (“*Philadelphia III*”) (City’s failure to consider race-neutral alternatives was particularly telling); *Webster*, 51 F.Supp.2d at 1380 (for over 20 years County never seriously considered race-neutral remedies); *cf. Aiken*, 37 F.3d at 1164 (failure to consider race-neutral method of promotions suggested a political rather than a remedial purpose).

123. *See, e.g., Florida A.G.C. Council, Inc. v. State of Florida*, 303 F.Supp.2d 1307, 1315 (N. Dist. Fla. 2004) (“There is absolutely no evidence in the record to suggest that the Defendants contemplated race-neutral means to accomplish the objectives” of the statute.); *Engineering Contractors II*, 122 F.3d at 928.



developing programs to address issues of financing, bonding, and insurance important to all small and emerging businesses.<sup>124</sup> Further, governments have a duty to ferret out and punish discrimination against minorities and women by their contractors, staff, lenders, bonding companies or others.<sup>125</sup>

The requirement that the agency must meet the maximum feasible portion of the goal through race-neutral measures, as well as estimate that portion of the goal that it predicts will be met through such measures, has been central to the holdings that the DBE program regulations meet narrow tailoring.<sup>126</sup> The highly disfavored remedy of race-based decision making should be used only as a last resort.

However, strict scrutiny does not require that every race-neutral approach must be implemented and then proven ineffective before race-conscious remedies may be utilized.<sup>127</sup> While an entity must give good faith consideration to race-neutral alternatives, “strict scrutiny does not require exhaustion of every possible such alternative...however irrational, costly, unreasonable, and unlikely to succeed such alternative might be... [S]ome degree of practicality is subsumed in the exhaustion requirement.”<sup>128</sup>

## 2. Set Targeted M/WBE/HUB Goals

Numerical goals or benchmarks for M/WBE/HUB participation must be substantially related to their availability in the relevant market.<sup>129</sup> For example, the DBE program rule requires that the overall goal must be based upon demonstrable evidence of the number of DBEs ready, willing, and able to participate on the recipient’s federally assisted contracts.<sup>130</sup> “Though the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets. This stands in stark contrast to the program struck down in *Croson*.”<sup>131</sup>

Goals can be set at various levels of particularity and participation. The County may set an overall, aspirational goal for its annual, aggregate spending. Annual goals can be further disaggregated by race and gender. Approaches range

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124. See 49 C.F.R. §26.51.0.

125. *Croson*, 488 U.S. at 503 n.3; *Webster*, 51 F.Supp.2d at 1380.

126. See, e.g., *Sherbrooke*, 345 F.3d. at 973.

127. *Grutter*, 529 U.S. at 339.

128. *Coral Construction*, 941 F.2d at 923.

129. *Webster*, 51 F.Supp.2d at 1379, 1381 (statistically insignificant disparities are insufficient to support an unexplained goal of 35% M/WBE participation in County contracts); see also *Baltimore I*, 83 F.Supp.2d at 621.

130. 49 C.F.R. §26.45 (b).

131. *Id.*

from a single M/WBE or DBE goal that includes all racial and ethnic minorities and non-minority women,<sup>132</sup> to separate goals for each minority group and women.<sup>133</sup>

Goal setting is not an absolute science. In holding the DBE regulations to be narrowly tailored, the Eighth Circuit Court of Appeals noted that “[t]hough the underlying estimates may be inexact, the exercise requires the States to focus on establishing realistic goals for DBE participation in the relevant contracting markets.”<sup>134</sup> However, sheer speculation cannot form the basis for an enforceable measure.<sup>135</sup>

It is settled case law that goals for a particular solicitation should reflect the particulars of the contract, not reiterate annual aggregate targets; goals must be contract specific. “Standard” goals are not defensible, nor should the annual aspirational goals function as a predetermined floor. Contract goals must be based upon availability of M/WBEs/HUBs to perform the anticipated scopes of the contract, location, progress towards meeting annual goals, and other factors. Not only is this legally mandated,<sup>136</sup> but this approach also reduces the need to conduct good faith efforts reviews, as well as the temptation to create “front” companies and sham participation to meet unreasonable contract goals. While this is more labor intensive than defaulting to the annual or standard goals, there is no option to avoid meeting the narrow tailoring standard.

### **3. Ensure Flexibility of Goals and Requirements**

It is imperative that remedies not operate as fixed quotas.<sup>137</sup> A race- and gender-conscious program must provide for contract awards to firms who fail to meet the contract goals but make good faith efforts to do so.<sup>138</sup> In *Croson*, the Court refers approvingly to the contract-by-contract waivers used in the USDOT’s DBE program.<sup>139</sup> This feature has been central to the holding that the DBE program meets the narrow tailoring requirement.<sup>140</sup> Further, firms that

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132. See 49 C.F.R. §26.45(h) (overall goal must not be subdivided into group-specific goals).

133. See *Engineering Contractors II*, 122 F.3d at 900 (separate goals for Blacks, Hispanics and women).

134. *Sherbrooke*, 345 F.3d. at 972.

135. *BAGC*, 298 F. Supp.2d at 740 (City’s MBE and WBE goals were “formulistic” percentages not related to the availability of firms).

136. See *Sherbrooke*, 345 F.3d at 972; *Coral Construction*, 941 F.2d at 924.

137. See 49 C.F.R. §26.43 (quotas are not permitted and set-asides contracts may be used only in limited and extreme circumstances “when no other method could be reasonably expected to redress egregious instances of discrimination”).

138. See, e.g., *BAGC v. Chicago*, 298 F. Supp.2d at 740 (“Waivers are rarely or never granted.... The City program is a rigid numerical quota...formulistic percentages cannot survive strict scrutiny.”).

139. *Croson*, 488 U.S. at 508; see also *Adarand VII*, 228 F.3d at 1181.

140. See, e.g., *Sherbrooke*, 345 F.3d. at 972; *Webster*, 51 F. Supp. 2d at 1354, 1380.

meet the goals cannot be favored over those who made good faith efforts and firms that exceed the goals cannot be favored over those that did not exceed the goals.

#### 4. Review Program Eligibility Over-Inclusiveness and Under-Inclusiveness

The over- or under-inclusiveness of those persons to be included in the County's program is an additional consideration and addresses whether the remedies truly target the evil identified. The "fit" between the problem and the remedy manifests in three ways: which groups to include, how to define those groups, and which persons will be eligible to be included within those groups.

The groups to include must be based upon the evidence.<sup>141</sup> The "random inclusion" of ethnic or racial groups that may never have experienced discrimination in the entity's market area may indicate impermissible "racial politics".<sup>142</sup> In striking down Cook County, Illinois' construction program, the Seventh Circuit remarked that a "state or local government that has discriminated just against blacks may not by way of remedy discriminate in favor of blacks and Asian-Americans and women."<sup>143</sup> However, at least one court has held some quantum of evidence of discrimination for each group is sufficient; *Croson* does not require that each group included in the ordinance suffer equally from discrimination.<sup>144</sup> Therefore, remedies should be limited to those firms owned by the relevant minority groups, as established by the evidence, that have suffered actual harm in the market area.<sup>145</sup>

Next, the firm's owner(s) must be disadvantaged. The DBE Program's rebuttable presumptions of social and economic disadvantage, including the requirement that the disadvantaged owner's personal net worth not exceed a certain ceiling and that the firm meet the Small Business Administration's size definitions for its industry, have been central to the courts' holdings that it is narrowly tailored.<sup>146</sup> "[W]ealthy minority owners and wealthy minority-owned

141. *Philadelphia II*, 6 F.3d 990, 1007-1008 (strict scrutiny requires data for each minority group; data was insufficient to include Hispanics, Asians or Native Americans).

142. *Webster*, 51 F.Supp.2d at 1380-1381.

143. *Builders Association of Greater Chicago v. County of Cook*, 256 F.3d 642, 646 (7th Cir. 2001) ("*Cook II*").

144. *Concrete Works IV*, 321 F.3d at 971 (Denver introduced evidence of bias against each group; that is sufficient).

145. *H. B. Rowe*, 615 F.3d at 233, 254 ("[T]he statute contemplates participation goals only for those groups shown to have suffered discrimination. As such, North Carolina's statute differs from measures that have failed narrow tailoring for overinclusiveness.").

146. *Sherbrooke*, 345 F.3d at 973; see also *Gutter*, 539 U.S. at 341; *Adarand VII*, 228 F.3d at 1183-1184 (personal net worth limit is element of narrow tailoring); cf. *Associated General Contractors of Connecticut v. City of New Haven*, 791 F.Supp. 941, 948 (D. Conn. 1992), *vacated on other grounds*, 41 F.3d 62 (2nd Cir. 1992) (definition of "disadvantage" was vague and unrelated to goal).

firms are excluded, and certification is available to persons who are not presumptively [socially] disadvantaged but can demonstrate actual social and economic disadvantage. Thus, race is made relevant in the program, but it is not a determinative factor.”<sup>147</sup> Further, anyone must be able to challenge the disadvantaged status of any firm.<sup>148</sup> The certifications accepted by a local program, like Travis County’s, must meet these criteria.

## **5. Evaluate the Burden on Third Parties**

Failure to make “neutral” changes to contracting and procurement policies and procedures that disadvantage M/WBEs and other small businesses may result in a finding that the program unduly burdens non-M/WBEs.<sup>149</sup> However, “innocent” parties can be made to share some of the burden of the remedy for eradicating racial discrimination.<sup>150</sup> The burden of compliance need not be placed only upon those firms directly responsible for the discrimination. The proper focus is whether the burden on third parties is “too intrusive” or “unacceptable”. As described by the court in upholding the Illinois Tollway’s program for non-federally assisted contracts,

[t]he Court reiterates that setting goals as a percentage of total contract dollars does not demonstrate an undue burden on non-DBE subcontractors. The Tollway’s method of goal setting is identical to that prescribed by the Federal Regulations, which this Court has already found to be supported by “strong policy reasons” [citation omitted].... Here, where the Tollway Defendants have provided persuasive evidence of discrimination in the Illinois road construction industry, the Court finds the Tollway Program’s burden on non-DBE subcontractors to be permissible.<sup>151</sup>

Burdens must be proven and cannot constitute mere speculation by a plaintiff.<sup>152</sup> “Implementation of the race-conscious contracting goals for which [the federal authorizing legislation] provides will inevitably result in bids submitted

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147. *Sherbrooke*, 345 F.3d. at 973.

148. 49 C.F.R. §26.87.

149. *See Engineering Contractors I*, 943 F.Supp. at 1581-1582. (County chose not to change its procurement system).

150. *Concrete Works IV*, 321 F.3d at 973; *Wygant*, 476 U.S. at 280-281; *Adarand VII*, 228 F.3 at 1183 (“While there appears to be no serious burden on prime contractors, who are obviously compensated for any additional burden occasioned by the employment of DBE subcontractors, at the margin, some non-DBE subcontractors such as *Adarand* will be deprived of business opportunities”); *cf. Northern Contracting II*, at \*5 (“Plaintiff has presented little evidence that is [sic] has suffered anything more than minimal revenue losses due to the program.”).

151. *Midwest Fence I*, 84 F. Supp. 3d at 739.

152. *H.B. Rowe*, 615 F.3d at 254 (prime bidder had no need for additional employees to perform program compliance and need not subcontract work it can self-perform).

by non-DBE firms being rejected in favor of higher bids from DBEs. Although the result places a very real burden on non-DBE firms, this fact alone does not invalidate [the statute]. If it did, all affirmative action programs would be unconstitutional because of the burden upon non-minorities.”<sup>153</sup>

Narrow tailoring does permit certified firms acting as prime contractors to count their self-performance towards meeting contract goals, if the study finds discriminatory barriers to prime contract opportunities and there is no requirement that a program be limited only to the subcontracting portions of contracts. The DBE program regulations provide this remedy for discrimination against DBEs seeking prime work,<sup>154</sup> and the regulations do not limit the application of the program to only subcontracts.<sup>155</sup> The trial court in upholding the Illinois DOT’s DBE program explicitly recognized that barriers to subcontracting opportunities also affect the ability of DBEs to compete for prime work on a fair basis.

This requirement that goals be applied to the value of the entire contract, not merely the subcontracted portion(s), is not altered by the fact that prime contracts are, by law, awarded to the lowest bidder. While it is true that prime contracts are awarded in a race- and gender-neutral manner, the Regulations nevertheless mandate application of goals based on the value of the entire contract. Strong policy reasons support this approach. Although laws mandating award of prime contracts to the lowest bidder remove concerns regarding direct discrimination at the level of prime contracts, the indirect effects of discrimination may linger. The ability of DBEs to compete successfully for prime contracts may be indirectly affected by discrimination in the subcontracting market, or in the bonding and financing markets. Such discrimination is particularly burdensome in the construction industry, a highly competitive industry with tight profit margins, considerable hazards, and strict bonding and insurance requirements.<sup>156</sup>

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153. *Western States*, 407 F.3d at 995.

154. 49 C.F.R. §26.53(g) (“In determining whether a DBE bidder/offeror for a prime contract has met the contractor goal, count the work the DBE has committed to perform with its own forces as well as the work that it has committed to be performed by DBE subcontractors and suppliers.”).

155. 49 C.F.R. §26.45(a)(1).

156. *Northern Contracting II*, 2005 U.S. Dist. LEXIS 19868 at 74.

## 6. Review the Duration of the Program

Race-based programs must have durational limits. A race-based remedy must “not last longer than the discriminatory effects it is designed to eliminate.”<sup>157</sup> The unlimited duration and lack of review were factors in the court’s holding that the City of Chicago’s M/WBE construction program was no longer narrowly tailored; Chicago’s program was based on 14-year-old information which, while it supported the program adopted in 1990, no longer was sufficient standing alone to justify the City’s efforts in 2004.<sup>158</sup> How old is too old is not definitively answered,<sup>159</sup> but governments would be wise to analyze data at least once every five or six years.

In contrast, the USDOT DBE program’s periodic review by Congress has been repeatedly held to provide adequate durational limits.<sup>160, 161</sup> Similarly, “two facts [were] particularly compelling in establishing that [North Carolina’s M/WBE program] was narrowly tailored: the statute’s provisions (1) setting a specific expiration date and (2) requiring a new disparity study every five years.”<sup>162</sup>

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157. *Adarand III*, 515 U.S. at 238.

158. *BAGC*, 298 F.Supp.2d at 739.

159. *See, e.g., Associated General Contractors of Ohio, Inc. v. Drabik*, 50 F.Supp.2d 741, 747, 750 (S.D. Ohio 1999) (“*Drabik I*”) (“A program of race-based benefits cannot be supported by evidence of discrimination which is now over twenty years old.... The state conceded that it had no additional evidence of discrimination against minority contractors, and admitted that during the nearly two decades the Act has been in effect, it has made no effort to determine whether there is a continuing need for a race-based remedy.”); *Brunet v. City of Columbus*, 1 F.3d 390, 409 (6th Cir. 1993), *cert. denied sub nom Brunet v. Tucker*, 510 U.S. 1164 (1994) (fourteen-year-old evidence of discrimination “too remote to support a compelling governmental interest.”).

160. *See Western States*, 407 F.3d at 995.

161. *See* Fixing America’s Surface Transportation (“FAST”) Act, Pub. L. No. 114-94 (2015).

162. *H.B. Rowe*, 615 F.3d at 253.

# III. TRAVIS COUNTY'S HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISE PROGRAM

## A. Overview and Objectives of the HUB Program

Travis County was the first Texas county to adopt a Historically Underutilized Business (“HUB”) program in 1994. The County is committed to ensuring minority- and woman-owned business enterprises (“M/WBEs”) have full and fair access to compete for County contracts for construction, professional and consulting services, services and commodities contracts. In 2016, the County completed its first Disparity Study that found statistical evidence of business discrimination against M/WBEs in the Travis County Market area. From 2017 through 2020, the County implemented 16 of the 19 study recommendations. The program’s policies were revised and approved by the Commissioner’s Court in 2019. The County’s Purchasing Rules were amended in 2020.

The HUB program seeks to encourage full participation in all phases of its procurement activities. The HUB Program provisions in the County Purchasing Rules<sup>163</sup> set forth its annual aspirational goals by business category and the contracts exempt from program goal setting and the following nine objectives:

1. Encourage the use of HUBs in compliance with the 2016 Disparity Study.
2. Promote full and equitable business opportunities for all businesses through race- and gender-neutral initiatives.
3. Describe the minimum steps and requirements that the County is taking to ensure that contractors make efforts that by their scope, intensity, and appropriateness can reasonably be expected to achieve HUB participation and to assist certified HUB vendors in the County’s geographic and product markets in being awarded contracts.
4. Ensure that the HUB Program is narrowly tailored so that it complies with the law.

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163. Chapter 32, Subchapter A. General Provisions 2, of Travis County’s Purchasing Rules.

5. Provide opportunities for HUBs to broaden and enhance their capacities to do business with the County.
6. Administer the HUB Program in compliance with federal and state law.
7. Regularly review the HUB Program to examine compliance with legal requirements for affirmative action contracting programs.
8. Work with the Texas Department of Transportation (“TxDOT”) and its Disadvantaged Business Enterprise (“DBE”) program for the design and construction of various public works projects.
9. Assist corporate economic development agreement recipients and public improvement districts to implement and perform reporting under applicable programs, including compliance with the HUB Program or the City of Austin’s Minority Business Enterprise/Woman-Owned Business Enterprise Program.

The HUB Director must submit a semi-annual report reviewing the County’s progress in meeting its aspirational goals and program recommendations to the Commissioners Court. The Court has the authority to reauthorize the program according to the sunset provisions that have been established in the County’s Purchasing Procedures Guide.

## **B. Program Administration**

The HUB Program is administered by the County’s Purchasing Office. Program requirements are specified in the Purchasing Office’s 2021 Purchasing Procedures Guide.<sup>164</sup>

The HUB Program staff and Purchasing Office staff are primarily responsible for implementing the program. The HUB Program staff consists of the HUB Program Director, who reports directly to the County Purchasing Agent, and the HUB Coordinator who reports to the HUB Program Director. In addition to the HUB Program staff, a Procurement team is assigned to manage the procurement for HUB compliance. Compliance staff in the Purchasing Office are also tasked with assisting with HUB Program compliance.

Responsibilities of the HUB Program staff include:

1. Reviewing a HUB’s certification status to determine validity.
2. Reporting HUB certification issues to the certifying agencies.
3. Establishing project-specific goals that are narrowly tailored to the availability of HUBs in the relevant market area.
4. Examining the scope of work for projects and identifying subcontracting opportunities.

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164. <https://www.traviscountytx.gov/images/purchasing/Doc/purchasing-procedures-guide.pdf>.



5. Researching and maintaining lists of HUBs in the Metropolitan Statistical Area (“MSA”) to provide to solicitation respondents and determining how many HUBs may be available for a project.
6. Contacting community partners to gather information about similar contracting and subcontracting opportunities.
7. Reviewing HUB Declarations to determine compliance.
8. Communicating non-compliance with pre-award HUB requirements to Purchasing staff.
9. Performing outreach to, and assisting, HUB vendors by providing plans and project manuals to contractors and trade associations, attending pre-bid conferences and bid openings and providing technical assistance to HUBs and contractors.
10. After contract award, notifying the contractor and subcontractors in the declaration of the award through the VTS.
11. Reporting, tracking and verifying payment information and percentage of work performed in the VTS.
12. Reviewing and approving subcontractor substitutions and scope changes.
13. Managing and performing outreach to encourage prime vendor use of HUB subcontractors.
14. Hosting forums and other events to provide HUBs with visibility in the community.
15. Performing internal County outreach efforts and education to encourage user departments to participate and support the HUB Program.
16. Assisting User Departments in evaluating their purchasing needs, developing scopes of work for HUB projects and identifying qualified HUBs for projects.

## **C. HUB Program Eligibility**

The County is a non-certifying entity. The County accepts HUB and M/WBE certifications by the State of Texas, the City of Austin, the Texas Unified Certification Program of the DBE program and the South Central Texas Regional Certification Agency. Other certifications that meet the basic HUB certification requirements may be accepted on a firm-by-firm basis if approved by the Commissioners Court.

A HUB must meet the following criteria to become certified:

- Not exceed the size standards set by the Texas Administrative Code.<sup>165</sup>

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165. 34 Tex. Admin. Code § 20.294. Gross receipts or total employment levels during four consecutive years must not exceed the SBA size standards in 13 CFR, §121.201.

- Have its principal place of business in Texas.<sup>166</sup>
- Be at least 51% owned by an Asian Pacific American, an African-American, a Hispanic-American, a Native-American, an American woman and/or a Service-Disabled Veteran, who resides in Texas and actively participates in the control, operations, and management of the business.<sup>167</sup>

## D. Goal Setting Policies and Procedures

### 1. Aspirational Goals

The County has adopted annual aspirational goals by business category that are based on the availability of ready, willing, and able HUBs as determined by the 2016 Disparity Study. The overall, aggregated aspirational HUB goal for the total of annual County spend is 24.12%. The Travis County HUB goal totals for each business category, broken out by minority and gender, are presented below. The County has implemented policies and procedures to achieve these aspirational goals and annually measures its progress towards achieving them.

Travis County HUB Goals	Construction	Commodities	Chapter 2254 Professional Services <sup>a</sup>	All Other Services
African American	1.46%	2.59%	1.13%	1.86%
Hispanic	8.08%	13.57%	5.54%	6.67%
Asian Pacific American	1.65%	2.93%	3.50%	3.19%
Native-American	0.38%	0.31%	0.32%	0.54%
Non-Minority Female	8.56%	8.04%	10.10%	14.11%
<b>HUB Totals</b>	<b>20.13%</b>	<b>27.43%</b>	<b>20.58%</b>	<b>26.37</b>

a. Chapter 2254 of the Texas Government Code, The Professional Services Procurement Act, requires architectural, engineering or land surveying services to be procured on the basis of the most qualified bidder and not the lowest price. 10 Tex. Gov't Code § 2254.004.

166. 34 Tex. Admin. Code § 20.282(11).

167. 34 Tex. Admin. Code §§ 20.282(19), 20.283.

## **2. Contract Goals**

For contracts with an estimated value of over \$1M, HUB staff identify opportunities for HUB participation. HUB staff set race- and gender-specific contract goals based on subcontracting opportunities in the project scope, the dollar value of the opportunities, the availability of at least three HUBs in the project scope, availability estimates provided by the 2016 Disparity Study, levels of past utilization on County contracts and any other relevant factors. HUB staff also reach out to community partners, local agencies and educational institutions for information about similar contracting and subcontracting opportunities to assist in establishing contract goals. Although minority and gender goals are stated in the solicitation, the overall HUB contract goal is used for evaluating responsiveness to goal requirements. On projects where there are fewer than three subcontracting opportunities, there are fewer than three available HUBs or it is in the best interest of the County, HUB contract goals are not set and the solicitation is considered race-neutral.

For contract values between \$50,000 and \$1M, the HUB staff can use the annual aspirational HUB goal total for the business category to set the goal for the contract.

For projects with values of \$50,000 or less, contract goals are not applied. However, HUB utilization is encouraged to achieve aspirational HUB goal totals for each business category. For goods and services contracts of \$5,000 or less, the Purchasing Office encourages each user department to consider using HUBs based on their availability. For awards of goods and services purchase orders over \$5,000 but under \$50,000 Purchasing staff use centralized bidders lists that include HUBs and non-HUBs to solicit bids and proposals from three vendors when reasonable and practical.

Contract goals are not applied to the following:

- Purchases that are exempt from competition under the Texas Local Government Code;
- Purchases that have been deemed exempt by Commissioners Court Order;
- Goods and services purchased through an interlocal agreement, cooperative purchasing, with purchasing cards or from a non-profit corporation;
- Purchases that are considered certifications or memberships in professional organizationsInsurance coverage; and
- Third-party administration for self-funded risks or are revenue-producing.

## E. HUB Program Requirements and Procedures

### 1. Good Faith Efforts Requirements

A respondent to a solicitation, for which a HUB goal has been established, must demonstrate its intent to include HUB participation by documenting utilization of HUBs or submitting Good Faith Efforts (“GFEs”). The VTS provides a searchable database of certified HUBs. Respondents can demonstrate GFEs by satisfying one of the following:

- Option a: the respondent is a certified HUB and self-performs all the work on the project.
- Option b: the respondent meets or exceeds the overall HUB goal by subcontracting to HUBs.
- Option c: the respondent proposes only HUBs to fulfill all subcontracting opportunities identified in the Declaration and substantially meets the HUB goal (i.e., 50% or more of the HUB goal).
- Option d: If the respondent cannot meet or substantially meet the overall HUB goal (i.e., Options a, b, or c. do not apply), then the respondent shall follow the outreach requirements (described in the HUB Declaration form). This includes submission of the required documentation evidencing compliance with the outreach requirements.

Respondents that fail to satisfy one of these options or provide the required documentation may be deemed as non-responsive for purposes of awarding the contract.

The specific steps that a respondent must take to demonstrate GFEs when the goal is not met is provided in the HUB Declaration Form. When HUB goals are not fully or substantially met, respondents must provide written notice to three certified HUBs, all community partners and plan rooms at least seven business days prior to the solicitation submission date. The Notice must include the scope of work, information about where to review plans and specifications, bonding and insurance requirements, required qualifications and point of contact. Respondents are required to give fair consideration to HUBs looking to subcontract and must include documentation of their GFEs outreach with their Declaration. Travis purchasing procedures do not require acceptance of a higher quote to meet the goal.

## **2. Pre-Award Procedures**

When the HUB staff sets a goal on a solicitation, the subcontracting opportunities are specified in the HUB Declaration form in the solicitation package. The completed HUB Declaration form and the required documentation must be provided with the solicitation response for the bid or proposal to be considered responsive. The HUB Declaration form requires respondents to submit a list of all proposed subcontractors, including second and third tier subcontractors. All subcontractors listed must be notified before the response is submitted. Respondents having difficulty in finding HUBs to fulfill the subcontracting goals can contact HUB staff for a list.

HUB staff are responsible for reviewing HUB Declaration forms to determine compliance, including the certification status of the listed HUBs. On selected projects, the contract scope and price can be compared to assess whether respondents are soliciting and hiring subcontractors in a non-discriminatory manner and whether the HUB quotes are inflated. Any solicitations determined by HUB staff to be out of compliance with GFEs requirements are reviewed by Purchasing staff and the User Department. If the User Department recommends a solicitation response that does not meet the goal(s) or demonstrate GFEs, the Purchasing Agent presents the User Department's recommendation to the Commissioners Court. The Court can reject the response as non-responsive because it did not meet HUB requirements or advise the HUB Director to accept the response based on additional factors that support the decision as being in the best overall interest of the County.

The Commissioners Court may also waive HUB requirements for a respondent when the solicitation includes a negotiated price or scope of services. This is typically done before beginning negotiations.

## **3. Post Award Contract Administration and Compliance Procedures**

Respondents are required to provide honest and accurate information regarding HUB utilization pre- and post-contract award. The finalized HUB Declaration form submitted with the winning vendor's response becomes part of the final contract. Contractors must not self-perform work designated for HUB subcontractors without prior approval. The contractor cannot make any changes in the scope of the contract or substitute any subcontractors in its Declaration without written approval of the Purchasing Agent or HUB Director.

All requests for subcontractor substitutions or modifications must be made through the VTS system or in writing to HUB staff and must be accompanied by an explanation that complies with the County's guidelines outlined in the most up-to-date Travis County Purchasing Procedures Guide. The HUB Director has seven business days from receipt of the form to notify the contractor and sub-

contractors whether the request was approved or denied. Acceptable reasons listed in the VTS system for subcontractor substitution or modifications are:

- Failure or refusal to execute a written contract;
- Failure or refusal to perform the work;
- Failure to meet prime contract;
- Bankruptcy, insolvency, or exhibiting credit unworthiness;
- Ineligibility to work on public works projects because of suspension and debarment;
- Voluntary withdrawal from the project;
- Owner is deceased or disabled;
- Failure to meet insurance, licensing, or bonding requirements;
- Termination of the subcontractor's business;
- County changes in the scope of work that eliminates or reduces the subcontracting opportunity;
- Subcontractor is underperforming;
- Need to increase HUB attainment;
- Not a responsible contractor; or
- Other documented good cause.

GFEs apply to requests for substitution of a HUB for another HUB subcontractor are encouraged.

**a. Contract Monitoring and Payments to Subcontractors**

Since 2006, the County has used B2Gnow, a web-based contracting tracking and data collection system. The VTS provides the ability to monitor changes in subcontractors, report payments and evaluate the HUB Program.<sup>168</sup> HUB staff are responsible for verifying payments to subcontractors through the VTS and preparing reports about subcontracting payments made to HUBs. Contractors must submit a Progress Assessment Report ("PAR") each month to document compliance with the HUB Program Declaration. To ensure the accuracy of the information, subcontractors are also required to confirm payment. Contractors and all first, second and third tier subcontractors are required by the Texas Prompt Payment Act<sup>169</sup> to pay

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168. The VTS can be accessed at <https://travis.traviscountyhub.com>.

their subcontractors and suppliers within 10 days after they are paid. Failure to submit a PAR report with a monthly invoice can result in the County withholding payments or suspending work.

Contracts are audited for HUB compliance by the Purchasing Office staff. Considerations to determine sanctions for non-compliance are: 1. The type of and seriousness of the non-compliance; 2. Whether the non-compliance is willful or negligent; 3. The steps taken by the contractor to correct the non-compliance; 4. Whether the non-compliance results from falsification, misrepresentation or the withholding of information; and 5. The frequency of non-compliance within the previous 24-month period.

Possible sanctions include admonishment letters from the Purchasing Agent or County Attorney's office demanding that the non-compliance be corrected; demands to the surety company for performance; notice of breach of contract and the exercise of contract remedies, including termination of the contract and imposition of damages; and suspension of eligibility for future contract awards for a specified set time period as set forth by the County's Purchasing Procedure Guide.

If the contractor does not agree with the compliance notice, it may submit a written response to the Purchasing Agent within five business days after the date of the notice. The response must include the contact information of the contractor's representative; the reasons and facts supporting the response and references to all activities and documents that support the contractor's viewpoint. The Purchasing Agent will provide a written decision within ten business days after the date of the non-compliance notice. The contractor may appeal the Purchasing Agent's decision in writing to the Commissioners Court on or before the tenth business day after the Purchasing Agent's decision. The decision by the Commissioners Court is final. Failure by the contractor to meet any of the procedures and time limits for appeal results in denial.

## **F. Business Development, Outreach and Training**

The Travis HUB staff sponsor a wide range of support services, forums, workshops, and outreach campaigns designed to increase visibility and to encourage participation of HUBs in the County's contracting opportunities.

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169. <https://statutes.capitol.texas.gov/docs/gv/htm/gv.2251.htm>.

## **1. Technical Support and Outreach**

The HUB staff assist HUB vendors throughout the solicitation process by participating in pre-bid, bid openings and pre-construction meetings, and sharing construction plans and project information with contractors and trade associations. HUB staff also use local chambers of commerce, plan rooms, small business advocacy groups and community partners to provide technical assistance to HUBs on topics such as about how to use the County's third-party vendor registration, procurement and bid notification system, Periscope S2G<sup>170</sup>, bidding opportunities, how to document GFEs and how to obtain certification.

The County website provides a link to a YouTube video on how to complete the HUB Declaration Form and to YouTube videos showing how to find certified vendors on the lists of each of the accepted certifying agencies. In addition, the County offers training webinars on online certification applications, contract compliance reporting, introduction to the VTS system, vendor registration/application/prequalification and how to complete a prime contractor utilization plan.

The County uses multiple approaches to reach HUBs to increase participation in procurement opportunities. HUB staff have partnered with local minority advocacy groups such as the Greater Austin Asian Chamber of Commerce and the U.S. Hispanic Contractors Association to communicate opportunities to HUBs. HUB staff also convey bidding opportunities, current projects and upcoming events and training sessions to HUBs directly through electronic notifications and through the County's enhanced website. Communications include:

- Bid alerts and research bid opportunities through the County's web-based procurement system, Periscope S2G.
- Regular notifications to HUBs of current procurement opportunities, outreach events and upcoming training webinars through the County's VTS Outreach Management Module.

The County's enhanced website offers access to a wide range of information and resources that includes:

- Current solicitations, program information and necessary forms.
- Links to Plan Rooms to facilitate access to construction documentation, plans and specifications.

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170. Periscope S2G provides the web-based bidding service. Registration is free for Travis County. <https://prod.bidsync.com/travis-county>. There is a fee for premium accounts that show bids from government agencies across the U.S. The service was renamed from BidSync to Periscope S2G in 2020.



- A searchable database of awarded contracts to assist HUBs with research and identifying potential subcontracting opportunities. The Purchasing page also offers a link to “How to Do Business with Travis County” video instruction about how to ensure prompt payment and an interactive, searchable open database about County payment details.
- Scheduled projects providing information about upcoming solicitations and yearly work plans for the Public Works Department. The Public Works website page also lists all projects, maps, active capital improvement projects.

The County’s outreach efforts are further enhanced by its partnership with other local agencies and governments. The Central Texas Small Business Partnership, which includes Travis County, the Austin Community College District, Austin Independent School District, the City of Austin, and Capitol Metro, conducts a wide range of outreach campaigns to certified firms, to encourage participation in HUB and other affirmative action contracting programs. Outreach campaigns range from invitations to conferences, networking events/mixers and include Meet-The-Buyers Conference, the Interagency HUB Vendor Fair, Central Texas Small Business Conference and the Bexar County Business Conference.

## **2. Supportive services**

The Travis County HUB program offers supportive services by both sponsoring its own programs or leveraging programs of other Travis County municipal agencies, departments and government supported entities.

### **a. Travis County Advisor Apprentice Program**

Travis County HUB staff introduced the Travis County Advisor Apprentice Program (“TCAAP”) in 2017 to facilitate mentor-protégé relationships between experienced contractors and HUB firms. The Program is voluntary, requires a one-year commitment through a formal agreement and provides professional guidance and support to HUBs to foster their development and growth. Applications are reviewed and advisors and apprentices are matched according to goals set by the TCAAP Application Review Committee. The Committee is comprised of representatives from user departments and the Purchasing Office’s compliance unit. Advisors and apprentices commit to regularly scheduled meetings and to meet expectations set for their respective roles. Apprentices must complete assigned deliverables, including a business plan, in order to graduate from the program. HUB apprentices are also required to attend three of four County-sponsored annual courses to receive their certificate of graduation. The curriculum of the four courses is designed to educate HUBs on doing busi-

ness with the County, local area government contracting, available financial assistance programs and marketing practices. Upon completion of the apprenticeship and three courses, HUBs receive a Certificate, recognition from a Commissioners Court resolution and County social media, photo opportunities, digital stamp/emblem for their website and business cards and a capabilities statement to show they participated in the Program.

Due to COVID-19, the TCAAP Program is currently on hold.

**b. HUB Training**

In 2019, through an IC<sup>2</sup> Institute and Travis County cooperative agreement, the Jon Brumley Texas Venture Labs at the McCombs School of Business UT Austin invited HUBs to participate in a 10-week long, tuition-free, accelerator program matching Austin-area startups with UT-Austin graduate student teams. The objective was to advance the growth of HUBs. The program was promoted in two orientation sessions conducted specifically for HUBs.

IC<sup>2</sup> Institute, as part of its agreement with the County, prepared a Resource Guide for Historically Underutilized Businesses in the Austin-Round Rock MSA that provides information to HUBs about contracting with the County and other local governments.<sup>171</sup> It was published in September 2020, and is available on the HUB Program webpage.

**c. Readiness Training Program**

In April 2021, the Commissioners Court approved a Readiness Training Program to train and provide the tools necessary for small businesses to increase their capacities. The program is a joint effort between the County and IC<sup>2</sup> of UT Austin.

**d. Additional Resources**

The enhanced County website, <https://www.traviscountytexas.gov/purchasing/hub>, provides links to technical support resources throughout the state to assist HUBs. These resources include 15 surety bond sources and the Procurement Technical Assistance Centers Program. The County has also encouraged participation in bonding education and loan programs offered by the City of Austin.

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171. <https://www.traviscountytexas.gov/images/purchasing/Doc/Resource-Guide-For-HUBs-In-Austin-Round-Rock-MSA.pdf>.

### 3. Staff Training

Training is a major emphasis for Purchasing Office and HUB staff.<sup>172</sup> HUB and Purchasing Office staff regularly attend the annual B2Gnow User Training Conference and the American Contract Compliance Association's annual National Training Institute. In 2021, HUB staff attended software training on "Achieving Supplier Diversity Goals". Also in 2021, HUB and Purchasing Office staff attended Nancy Conner Consulting's three-part virtual training series, "Building Blocks for a Successful Supplier Diversity Initiative". The series provided instruction on tools and features for creating an effective supplier diversity process.

HUB staff also provide internal training to relevant departments about the HUB program and the HUB staff's role in the procurement process. A primary objective for the program in the next year is the development of a HUB 101 training program for County staff involved in procurement.

## G. Experiences with Travis County's Historically Underutilized Business Program

To explore the impacts of Travis County's HUB program, we interviewed 51 individuals about their experiences and solicited their suggestions for changes. We also collected written comments from 105 businesses about their experiences with the HUB program through an electronic survey.

### 1. Business Owner Interviews

The following are summaries of the topics discussed during the group interviews. Quotations are indented and have been edited for readability. They are representative of the views expressed during the group interviews.

#### a. Access to information about contracting opportunities

Many interviewees expressed frustration with accessing information about County contracting and procurement opportunities.

Never been solicited or received any correspondence whatsoever from Travis County or the city of Austin for that matter. And do quite a bit of work throughout the state of Texas. And do receive quite a bit of correspondence from

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172. In 2020, The Travis County Purchasing Office was once again awarded the 25<sup>th</sup> Annual Achievement of Excellence in Procurement (AEP) award from the National Procurement Institute based on multiple criteria including the level of commitment to staff development. This will make the 15<sup>th</sup> year receiving the annual AEP award.

the other counties, but nothing from Travis County, at all. Gone on their websites a couple of times to look again, as the other comments were, they're difficult to navigate and don't hear too much.

I cannot find a single construction related procurement for Travis County as we speak.

I also checked. That's why, again, I was on the call today, as I was thinking maybe I was missing something, but I didn't know how to go about it.

Our biggest concern is we have a hard time identifying prime opportunities before they come out and hit those lists. Whereas it seems like a lot of larger firms we work with know about these things months or years in advance and it's because they have existing prime contracts, right, and they're interfacing with the county consistently. So those who are sub-consultants or haven't won prime work before, we're not really exposed to that same information or have an avenue to get that same information. Especially with how busy the county is. It's hard to meet with the folks over there that know these things. So, we feel like we're at a little bit of a disadvantage, just not having that communication.... From what we've seen, [Travis County's website is] pretty out of date. TxDOT puts out a pretty good one.

Sometimes Travis County website itself is difficult to maneuver and get information, update information, even on their org chart. It's difficult to tell. I think it would be helpful also to list the projects and who was awarded those contracts and keep those for 2020, 2021, since some of the job order contracts or the IDIQ projects are for multi-year, just looking at when those were awarded and when the next ones are coming up would be helpful.

[Travis County] can also just post upcoming opportunities or bids to get information. There's none of that.... And it can be so helpful.... they have contracts that are out there for three years with two five-year extensions. You have no way of knowing when those are going to be upcoming. Other entities make that information available out of their budgets, even talking about projects that are coming up. And you really have to dig harder on the Travis County

budget or website to find information that especially the City of Austin puts out or even small state agencies.

What I hear quite frankly is that they just hire the same vendors over and over again. So, I don't know how they're getting around the bidding process or it just isn't well advertised is my guess because I'm just not... We're having difficulty finding jobs in Travis County....4-7.

Additional outreach efforts by the County were one suggestion for increasing M/WBEs' access to information.

Just making matchmaking events easier. Some like Bexar County does a really good job of matchmaking events between the health vendors and purchasing agencies. If Travis County did that, that would be very beneficial to at least put a face to a name or give a HUB vendor the opportunity to interface with an agency. Similarly, even with the prime and subs, if there was a way for primes and subs to connect, that would be really helpful.

Several small business owners supported moving to virtual networking events to save time while increasing their reach.

Networking either online or in person [would be beneficial].

Anything implemented online would definitely be a huge asset.

**b. Payments**

Few firms reported issues with payment by the County. However, subcontractors were often at the mercy of the prime vendor.

We're a sub. If they could put something in there, maybe we could get maybe twice pay [per month]. That would make a big difference, make it easier because I also sometimes sub out to other trucks, and of course they can't wait because their expense, their fuel and paying their drivers enough and insurance. I pay them straight up to make sure that I can number one, keep their trucks, and then they also can keep working.

**c. M/WBEs' Experiences with Travis County's HUB Program**

In general, HUBs supported the County's program.

The goals need to really stay in place because it does help get jobs. I know I had a hard time in the beginning because the fact of it was, I wasn't known.

By all means, the goals need to stay in place because it does help us get work. I think without them, it would really, really be devastating.

Travis County has been nothing short of exponential in our progress as a small business HUB moving forward. We've received quite a few opportunities come ahead of us with it.... And it's just been a blessing is the best way to put it as far as we go.

Some M/WBEs had been able to use the goals to develop relationships that lead to work outside goals programs.

Yes [we have been able to get work on the private side].

**d. Meeting HUB Contract Goals**

Most prime bidders and proposers were able to meet the HUB contract goals.

I haven't had any issues meeting the goals.

I have no problem finding the firms to meet the categories.

Firms that were unable to meet the contract goal reported that the County was reasonable in evaluating their GFEs to do so.

It was very difficult to find the right people that had the certifications to do the [highly specialized] work. We did not have to meet the goal, but we did provide our good faith effort in an attempt to find people.

However, many reported that Travis County's complex requirements for bidders created the perception that the bidder must contact at least three firms in each listed code for the project, regardless of whether the firm would in fact be using any firm in a specific code or whether the bidder had already met or exceeded the goal, creating unnecessary burdens and unproductive results for all parties.

[The County will] list categories of disciplines of work that need to be performed on the project that may not actually be on that project. So, we have to basically reach out to three people that perform those services. Just for an example, it could be a roadway project where you might

have culverts on it, but they'll have a structural engineer requirement on there, which is typically vertical construction or unique retaining walls, that I know we won't use on that project. But we'll end up having to put him on the team. We'll end up getting a sub agreement. They might not ever get work.... The codes that are given for the categories of work don't necessarily reflect the actual job.... But when we actually design or when we actually go under contract, we'll meet our goal. There's no issue there. We're in full compliance. It's just during that procurement phase of having to meet the requirements.

If we're outright meeting the requirements of the procurement by putting our team forth, and all in all, we're showing that good faith effort without needing to contact an additional three team members, showing that documentation, including all that information in the procurement, and in my mind, wasting time in terms of ultimately getting the product together that needs to be part of the procurement process.... On a very large project where there's eight categories, I may have an additional 50 pages associated with my electronic submittal that is nonrelevant to anything and takes a lot of my time and effort from my team, which costs money.

The state HUB plan gives you that option to be able to say, "We've met the goal, and we can move on. Here's how we've met the goal, and here's how we're going to do the work." But Travis County program does not give you that option.

This additional GFEs requirement has led to wasted efforts and unfulfilled expectations for HUB firms.

We did have to put firms in just to meet the goal and to meet the codes. And then we ended up having to put in additional firms that we know will actually do the work [so you end up with extraneous firms].

I have to show that I have spoken to at least three HUB or DBE consultants for each category that they've listed in the procurement, knowing that I only need to work specifically with one. So, I'm reaching out, talking to three different consultants for each category, asking them to be a part of my team, knowing that I'm not going to be giving work to every single one of those people, or every single one of

those firms. And so, again, to my mind, that's just not doing them a favor.

I feel bad for some of the [HUB] firms. They're like, "Oh, I thought we were on your team."

Once the contract award process is over, most firms were able to meet their goals during contract performance.

No problem meeting the goal. That's never an issue because we build our team knowing what the goal is, even if we're not going to use Firm X, Y, Z. We're going to use this constructional firm that we know, work within all of our projects, but they're not in that code.

Bidders or proposers who had been unable to meet the goal generally reported that Travis County was reasonable in considering GFEs to do so.

With good faith effort plans, we've been very successful. We've never been downgraded or not awarded a [construction] contract on a low bid job because we haven't met the 20%.

They're flexible on [making good faith efforts].

## **2. Business Owner Survey Comments**

Written comments from the electronic survey have been categorized and are presented below. Comments are indented and have been edited for readability.

### **a. Experiences with Travis County's HUB Program Policies and Procedures**

Overall, most minority and female respondents strongly supported the program, and viewed program certification and goals as essential to obtaining contract work.

Absolutely, HUB Certification has opened up our doors to projects through Travis County. We never dreamed of becoming part of Renovation of Courthouses, Travis County offices, and Correctional Facilities in downtown Austin.

We hadn't been certified until last year. We wanted to work as if race didn't make a difference. But unfortunately, that's not true. It's a world of difference with the opportunities you get being [sic] certified.

By requiring goals [the program has helped our business].



[The program has provided us with] incredible bidding opportunities and that is what has carried me to gain work experience and gain a reputation over 34 yrs.

Yes, it [the Travis County HUB Program] has led us to be considered for several projects.

I get bid opportunities that I probably wouldn't get without the program.

[The program has] made projects available.

HUB makes us more qualified to do business with Travis County.

I have been working for the County for almost 2 years [because of the program].

[The program] has given me credibility with clients.

The state HUB program has helped my business. The prime contractors I work for use the budget allocated for my work to meet their HUB goals. I'm unsure if any of my prime contractors were working for Travis County on projects they've hired me for.

Please keep giving minorities some opportunities that we would otherwise not get.

Having the HUB designation is very important for transportation projects.

[The program has provided us with] offers of work.

[The program has provided us with] access to one of my clients.

[The program] goals and outreach [have helped my business].

Occasionally, a prime firm will put us on a team in an effort to meet a HUB goal.

We've occasionally been included in proposals that required a HUB.

For some HUB respondents, the program has been less useful.

I have been HUB certified for over 4 years and still no contract. I have someone that aides [sic] with submission of bids and still nothing.

It has not helped my business - I have been a HUB vendor for 15 years, but I have not received any pricing requests for my scope and size of business.

I've attended one HUB event, but since we weren't in contact with prospective clients, it didn't help us increase business with the county.

We have not seen a noticeable difference [in our business].

Other than reviewing my proposals and saying they are good, I have not had any success with any of the HUB programs in actually receiving awards.

So far, the HUB program has not helped my business.

An increased effort to provide local and HUB businesses with true opportunities to bid for projects [would be helpful].

The County must develop a means to target small businesses for contract opportunities.

One HUB commented on the complexity of the Program.

The HUB program seems a bit complicated to most firms.

**b. Access to County Contracting Opportunities**

Some HUB respondents viewed Travis County and the HUB program as a closed network with entrenched vendors.

County seems to have preferred vendors and those are typically white male.

It is a lot of effort to write proposals and it seems [that] the RFPs are an afterthought when the agency already knows who they want and they are requesting bids to be in compliance but have no intention in giving the award to anyone else than who they previously wanted. It is very discouraging.

We do struggle with being considered for new job opportunities.

Respondents requested more opportunities to perform as prime contractors.

Difficult to get contracts directly. I always have to subcontract.

Direct access to bid on work based on experience and performance with past clients.

A non-HUB respondent supported the idea.

More emphasis on allowing HUBs to prime contracts instead of needing to sub contract under larger firms. RFPs written to fit a HUB's capabilities, when possible, instead of the restraints placed in the RFP that would limit the ability for a HUB to prime.

Increasing access to contracting opportunities through smaller projects or "unbundling" contracts was one suggestion to increase HUB opportunities.

No opportunity to bid on small contracts.

Have more small jobs.

RFQs and RFPs that do not have requirements that only a much larger firm (national engineering and other consulting firms) could respond to. I am one-person shop with expansive capabilities and a network of other Latino-owned firms to pull from but the requirements for consultants are such that only much larger firms have that type of project experience leading (in terms of dollars and project size).

Insurance and bonding requirements were cited as barriers to taking on County work.

I just am a supplier of product. Other company's deliver for me, like UPS or some other freight company. I never set foot on the job, but in spite of that you still require insurance, why?

The performance bond requirements are unfair.

[The program has] not [been] any [help] at all because of the insurance [requirements].

The insurance requirements of the local government are unfair for [the] services sector.

Fair bonding requirements from local and state government [would be helpful].

HUB respondents requested greater access to County staff.

Talking with prospective clients at Travis County [would be helpful].

Opportunities to speak with [Travis County] department teams/leadership.

Access to the appropriate staff at County.

Opportunities to get in front of decision-makers to provide them with a level of confidence that a small company can deliver. Our company has successfully delivered many multi-million-dollar projects for the state of Texas as well as for fortune 500 companies.

One firm suggested the County do more to guide HUBs through County processes.

Having an advocate through the county. The jargon and process are new; therefore, we need help and someone fighting to help us.

**c. HUB Program Outreach**

Many HUB respondents were unaware of bidding opportunities and requested more outreach.

Finding out about opportunities for upcoming needs and being able to quote on those needs.

Not receiving offers or notice of opportunities.

Notification of procurement and purchasing opportunities.

Not aware of how to receive projects from the County.

Receive more information on available opportunities, invitations to bid.

Receiving notification of opportunities that align with our services.

We are not aware of Travis County HUB opportunity postings. We are involved in, and receive notification for state and City of Austin opportunities.

From Travis County, we have received no notices of informal or formal networking with our potential clients. We have only been invited to network with other HUBs. Maybe I'm not on the right mailing list for networking events?

However, one respondent expressed satisfaction with the level of communication.

[The program has been helpful] with shared information and regular communications.

Some wanted to see more targeted outreach to Black-owned businesses.

Reach out to black businesses.

Make it easier for my black and brown members to get involved.

Respondents were particularly interested in networking events and opportunities to build relationships with prime contractors.

Do more networking, not to just construction companies.

Provide HUB vendors with introductions to potential buyers who buy our types of services.

More access to ways to connect with qualified buyers, being able to highlight (for buyers) what makes 'great' production services and outcomes (most purchasing agents know zero about video production).

One respondent suggested the County should hold an industry day.

Please consider having an industry day for smaller consultants and HUB firms to go over the requirements of various types of RFQ/Ps and provide feedback on how the requirements could better match our qualifications and skills.

**d. HUB Program Compliance**

HUB respondents thought more could be done to monitor the program for non-compliance and fraud.

Accountability for vendors who say they are using HUBs but only put them on a bid because they have to and then we never hear from them again.

They need to add something in place to make sure Prime Contractor shows evidence that they have used HUB.

We know that in the arena of small disadvantage, HUB, etc. that many are owned by white females with the backing of white males.

**e. Experiences with Business Support Services**

HUB respondents who had participated in supportive services generally found them to be helpful.

They [supportive services] are productive.

Average to good [with working with supportive service programs].

I've worked through the San Antonio SBDC for application support.

However, one HUB respondent reported a negative experience.

I felt ignored. I felt as though they just needed a person of color to fill a void and did not really value my input.

Some HUBs requested more insurance, bonding, and financing services to help increase their capacity.

[Our business needs more] bonding assistance and financial assistance.

Any additional bonding and financial help would be fantastic.

Finance and advertising [would be helpful].

[More] capital [would help my business].

Information about insurance, leasing an office, and hiring an assistant.

Local bank lines of credit [LOC] would be helpful.

Mentor protégé programs were seen by several owners as an important support service to increase their capacity to take on more work.

I want to participate in the mentor programs.

Mentor protégé program [would help my business grow].

I would love to be able to find local mentors.

At least have a Mentor Protégé.

[A] mentor protege program [would help my business grow].

Several HUB and non-HUB respondents reported difficulties in finding a mentor protégé program that would accept them.

I have applied to the protege program without success.

I have tried to access mentor protege programs, but the mentors did not seem that interested in working with a new HUB.

We applied for mentor protege program but we were never given any consideration.

As a HUB, we tried to partner with big companies with no luck.

Non-HUB. We are interested in the Mentor protégé programs, but have not found anyone actively willing to help or include us.

Some HUB respondents were successful in expanding contracting opportunities through teaming arrangements or joint ventures.

We have been both a mentor and a protege and have not found these programs to drive business - at all. We have had more success teaming with other companies while using our DIR contract vehicles.

We are more successful being awarded HUB work when we joint venture with a firm.

## **H. Conclusion**

Travis County's HUB program implementation complies with M/WBE national best practices. Overall, HUBs obtained work as prime vendors and subcontractors. Prime contractors were generally able to comply with program requirements. The program was supported by participants and was generally viewed as important to their growth and development. However, there are some challenges to address, including broadening outreach and increasing communication of prospective contracting opportunities; increasing access to insurance and bonding; removing hurdles that make it difficult for subcontractors to move into the role of prime vendors; and developing initiatives to facilitate relationships between HUBs and large firms.





# IV. UTILIZATION, AVAILABILITY AND DISPARITY ANALYSIS FOR TRAVIS COUNTY

## A. Contract Data Overview

This Study examined Travis County's ("County") contract dollars for projects for the fiscal years 2014 through 2019. The Final Contract Data File ("FCDF") contained 386 prime contracts and 766 subcontracts.<sup>173</sup> Because of this relatively small number of contracts, we did not have to develop a sample and so we analyzed the entire corpus of records, including job order contracts. The net dollar value of contracts to prime contractors and subcontractors was \$455,733,819. Tables 4-1 and 4-2 present the distribution of these contracts and the net dollar value of contracts between prime contractors and subcontractors.

**Table 4-1: Final Contract Data File Contracts between Prime Contractors and Subcontractors**

Business Type	Total Contracts	Share of Total Contracts
Prime Contractors	386	33.5%
Subcontractor	766	66.5%
<b>TOTAL</b>	<b>1,152</b>	<b>100.0%</b>

*Source: CHA analysis of Travis County data*

173. North American Industry Classification System ("NAICS") codes of prime contractors and subcontractors were missing so these were assigned by CHA.

**Table 4-2: Final Contract Data File Net Dollar Value of Contracts between Prime Contractors and Subcontractors**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contractors	\$317,138,534	69.6%
Subcontractor	\$138,595,285	30.4%
<b>TOTAL</b>	<b>\$455,733,819</b>	<b>100.0%</b>

*Source: CHA analysis of Travis County data*

The FCDF was used to determine the geographic and product markets for the analysis, and to estimate the utilization of Minority- and Woman-owned Business Enterprises<sup>174</sup> (“M/WBEs”) of Travis County’s contract spending. We then used the FCDF, in combination with other databases (as described below), to calculate M/WBE unweighted and weighted availability in the County’s marketplace.

The balance of this Chapter presents detailed information on:

- The Final Contract Data File
- Travis County’s geographic market
- The utilization analysis
- The availability analysis
- The disparity analysis

## **B. Analysis of Travis County’s Contracts**

As discussed in Chapter II, the federal courts<sup>175</sup> require that a government agency narrowly tailor its race- and gender-conscious contracting program elements to its geographic market area. This element of the analysis must be empirically established.<sup>176</sup> The accepted approach is to analyze those detailed industries, as

174. We use the term “M/WBE” interchangeably with Historically Underutilized Business (“HUB”). The County uses the moniker HUB for its program but given that the other data sources utilized for this Report use the much more common label M/WBEs, we employ it here.

175. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program); 49 C.F.R. §26.45(c); <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> (“D. Explain How You Determined Your Local Market Area.... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.”).

defined by six-digit North American Industry Classification System (“NAICS”) codes,<sup>177</sup> that make up at least 75% of the prime contract and subcontract payments for the study period.<sup>178</sup> Table 4-3 identifies all of the NAICS codes in the Final Contract Data File. In Section B-1, we identify the County’s geographic market. This step of identifying the geographic market imposes a spatial constraint on this data set. Having established the geographic market, in Section B-2 we constrain the Final Contract Data File by this spatial parameter. Table 4-4 presents the resulting data.

**Table 4-3: Industry Percentage Distribution of Travis County Contracts by Dollars**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	22.4%	22.4%
238220	Plumbing, Heating, and Air-Conditioning Contractors	11.2%	33.6%
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	7.1%	40.7%
236220	Commercial and Institutional Building Construction	6.5%	47.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	5.2%	52.3%
541330	Engineering Services	4.0%	56.4%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.9%	59.3%
624310	Vocational Rehabilitation Services	2.7%	61.9%
517410	Satellite Telecommunications	2.6%	64.6%
541512	Computer Systems Design Services	2.1%	66.7%
238390	Other Building Finishing Contractors	1.9%	68.5%
238310	Drywall and Insulation Contractors	1.8%	70.4%
238910	Site Preparation Contractors	1.7%	72.1%
624110	Child and Youth Services	1.6%	73.7%
238990	All Other Specialty Trade Contractors	1.4%	75.1%
238150	Glass and Glazing Contractors	1.4%	76.4%

176. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore “economic reality”).

177. [www.census.gov/eos/www/naics](http://www.census.gov/eos/www/naics).

178. National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14346> (“National Disparity Study Guidelines”).

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
518210	Data Processing, Hosting, and Related Services	1.3%	77.7%
561730	Landscaping Services	0.9%	78.6%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.8%	79.3%
237110	Water and Sewer Line and Related Structures Construction	0.7%	80.1%
238120	Structural Steel and Precast Concrete Contractors	0.7%	80.8%
531210	Offices of Real Estate Agents and Brokers	0.7%	81.5%
237990	Other Heavy and Civil Engineering Construction	0.7%	82.1%
541690	Other Scientific and Technical Consulting Services	0.6%	82.8%
621498	All Other Outpatient Care Centers	0.6%	83.4%
238290	Other Building Equipment Contractors	0.6%	84.0%
561612	Security Guards and Patrol Services	0.6%	84.6%
238140	Masonry Contractors	0.6%	85.3%
238160	Roofing Contractors	0.6%	85.8%
561720	Janitorial Services	0.5%	86.4%
238320	Painting and Wall Covering Contractors	0.5%	86.9%
541310	Architectural Services	0.5%	87.4%
541370	Surveying and Mapping (except Geophysical) Services	0.5%	88.0%
238350	Finish Carpentry Contractors	0.5%	88.5%
238330	Flooring Contractors	0.5%	89.0%
561110	Office Administrative Services	0.5%	89.4%
541511	Custom Computer Programming Services	0.5%	89.9%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.4%	90.3%
541211	Offices of Certified Public Accountants	0.4%	90.8%
624190	Other Individual and Family Services	0.4%	91.2%
624229	Other Community Housing Services	0.4%	91.6%
562111	Solid Waste Collection	0.4%	92.0%
811111	General Automotive Repair	0.4%	92.4%
722310	Food Service Contractors	0.4%	92.8%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237130	Power and Communication Line and Related Structures Construction	0.4%	93.2%
541380	Testing Laboratories	0.4%	93.5%
424410	General Line Grocery Merchant Wholesalers	0.4%	93.9%
485991	Special Needs Transportation	0.3%	94.2%
424490	Other Grocery and Related Products Merchant Wholesalers	0.3%	94.5%
624120	Services for the Elderly and Persons with Disabilities	0.3%	94.8%
493110	General Warehousing and Storage	0.2%	95.0%
523930	Investment Advice	0.2%	95.2%
238110	Poured Concrete Foundation and Structure Contractors	0.2%	95.5%
561621	Security Systems Services (except Locksmiths)	0.2%	95.7%
624221	Temporary Shelters	0.2%	95.9%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.2%	96.0%
541990	All Other Professional, Scientific, and Technical Services	0.2%	96.2%
424470	Meat and Meat Product Merchant Wholesalers	0.2%	96.4%
541620	Environmental Consulting Services	0.2%	96.6%
561613	Armored Car Services	0.2%	96.7%
238340	Tile and Terrazzo Contractors	0.1%	96.9%
541820	Public Relations Agencies	0.1%	97.0%
424110	Printing and Writing Paper Merchant Wholesalers	0.1%	97.1%
561990	All Other Support Services	0.1%	97.3%
611710	Educational Support Services	0.1%	97.4%
562910	Remediation Services	0.1%	97.5%
621512	Diagnostic Imaging Centers	0.1%	97.6%
624210	Community Food Services	0.1%	97.8%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.1%	97.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541320	Landscape Architectural Services	0.1%	98.0%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.1%	98.1%
541110	Offices of Lawyers	0.1%	98.2%
323111	Commercial Printing (except Screen and Books)	0.1%	98.3%
621112	Offices of Physicians, Mental Health Specialists	0.1%	98.4%
424950	Paint, Varnish, and Supplies Merchant Wholesalers	0.1%	98.5%
493120	Refrigerated Warehousing and Storage	0.1%	98.5%
423490	Other Professional Equipment and Supplies Merchant Wholesalers	0.1%	98.6%
561440	Collection Agencies	0.1%	98.7%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.1%	98.8%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.1%	98.8%
611699	All Other Miscellaneous Schools and Instruction	0.1%	98.9%
541612	Human Resources Consulting Services	0.1%	99.0%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.1%	99.0%
562991	Septic Tank and Related Services	0.1%	99.1%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.1%	99.1%
621511	Medical Laboratories	0.1%	99.2%
541611	Administrative Management and General Management Consulting Services	0.05%	99.2%
541618	Other Management Consulting Services	0.05%	99.3%
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	0.05%	99.3%
423390	Other Construction Material Merchant Wholesalers	0.05%	99.4%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.04%	99.4%
423440	Other Commercial Equipment Merchant Wholesalers	0.04%	99.5%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541519	Other Computer Related Services	0.04%	99.5%
445230	Fruit and Vegetable Markets	0.04%	99.5%
484210	Used Household and Office Goods Moving	0.03%	99.6%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.03%	99.6%
237120	Oil and Gas Pipeline and Related Structures Construction	0.03%	99.6%
561710	Exterminating and Pest Control Services	0.03%	99.7%
541420	Industrial Design Services	0.03%	99.7%
454110	Electronic Shopping and Mail-Order Houses	0.02%	99.7%
491110	Postal Service	0.02%	99.7%
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	0.02%	99.8%
541350	Building Inspection Services	0.02%	99.8%
511210	Software Publishers	0.02%	99.8%
532111	Passenger Car Rental	0.02%	99.8%
811191	Automotive Oil Change and Lubrication Shops	0.02%	99.8%
424910	Farm Supplies Merchant Wholesalers	0.01%	99.8%
621999	All Other Miscellaneous Ambulatory Health Care Services	0.01%	99.9%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.01%	99.9%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.01%	99.9%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	0.01%	99.9%
423210	Furniture Merchant Wholesalers	0.01%	99.9%
424130	Industrial and Personal Service Paper Merchant Wholesalers	0.01%	99.9%
561320	Temporary Help Services	0.01%	99.9%
541613	Marketing Consulting Services	0.01%	99.9%
722513	Limited-Service Restaurants	0.01%	99.9%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
561790	Other Services to Buildings and Dwellings	0.01%	99.95%
541720	Research and Development in the Social Sciences and Humanities	0.01%	99.96%
444190	Other Building Material Dealers	0.01%	99.96%
238130	Framing Contractors	0.01%	99.97%
524126	Direct Property and Casualty Insurance Carriers	0.01%	99.97%
236210	Industrial Building Construction	0.01%	99.98%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.005%	99.98%
236118	Residential Remodelers	0.005%	99.99%
424210	Drugs and Druggists' Sundries Merchant Wholesalers	0.004%	99.99%
488490	Other Support Activities for Road Transportation	0.004%	99.995%
221310	Water Supply and Irrigation Systems	0.002%	99.997%
541930	Translation and Interpretation Services	0.001%	99.998%
541922	Commercial Photography	0.001%	99.999%
448210	Shoe Stores	0.001%	99.9996%
811490	Other Personal and Household Goods Repair and Maintenance	0.0002%	99.9998%
212321	Construction Sand and Gravel Mining	0.0002%	100.0000%
<b>TOTAL</b>		<b>100.0%</b>	

Source: CHA analysis of Travis County data

## 1. Travis County's Geographic Market

Firm location was determined by ZIP code and aggregated into counties as the geographic unit. Contracts awarded to firms located in the state of Texas accounted for 86.9% of all dollars during the study period. The five counties within the Austin Metropolitan Area – Bastrop, Caldwell, Hays, Travis, and Williamson Counties - captured 77.9% of the state dollars and 67.7% of the entire FCDF.<sup>179</sup> Therefore, these five counties were determined to be the geographic

179. One contract in the FCDF went to a Philadelphia firm for the procurement of helicopters (Contract number 4400003462). The award amount of this contract was \$31,780,852. When this anomalous contract was subtracted from the FCDF, the state of Texas' share of the FCDF rose to 63.5% and the geographic market of Bastrop, Caldwell, Hays, Travis, and Williamson Counties share of the FCDF rose to 72.8%.



market for Travis County, and we limited our analysis to firms in these counties.

## 2. Travis County's Utilization of M/WBEs in its Geographic and Product Market

Having determined Travis County's geographic market area, the next step was to determine the dollar value of Travis County's utilization of M/WBEs<sup>180</sup> as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. Tables 4-4 through 4-6 present data on the utilization of contract dollars. (Note that the contract dollar shares in Table 4-4 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability<sup>181</sup> from unweighted availability, as discussed below).

**Table 4-4: NAICS Code Distribution of Contract Dollars in the Constrained Product Market**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$91,701,912.00	29.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$40,234,332.00	13.0%
236220	Commercial and Institutional Building Construction	\$27,004,984.00	8.7%
541330	Engineering Services	\$14,546,550.00	4.7%
624310	Vocational Rehabilitation Services	\$12,140,486.00	3.9%
517410	Satellite Telecommunications	\$11,959,848.00	3.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$11,827,070.00	3.8%

180. For our analysis, the terms "M/WBE" and "HUB" include firms that are certified by government agencies and minority- and woman-owned firms that are not certified. As discussed in Chapter II, the inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The "remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net.").

181. See "Tips for Goal Setting in the Disadvantaged Business Enterprise Program" ("F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.") (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	\$8,125,593.50	2.6%
624110	Child and Youth Services	\$7,296,569.50	2.4%
238910	Site Preparation Contractors	\$6,893,243.00	2.2%
238310	Drywall and Insulation Contractors	\$6,612,982.50	2.1%
238390	Other Building Finishing Contractors	\$5,129,544.50	1.7%
238990	All Other Specialty Trade Contractors	\$3,921,104.00	1.3%
237110	Water and Sewer Line and Related Structures Construction	\$3,231,078.00	1.0%
531210	Offices of Real Estate Agents and Brokers	\$3,180,300.00	1.0%
561730	Landscaping Services	\$3,105,404.25	1.0%
621498	All Other Outpatient Care Centers	\$2,846,247.50	0.9%
238160	Roofing Contractors	\$2,696,385.25	0.9%
541690	Other Scientific and Technical Consulting Services	\$2,358,976.25	0.8%
238350	Finish Carpentry Contractors	\$2,131,549.25	0.7%
237990	Other Heavy and Civil Engineering Construction	\$2,095,891.25	0.7%
238120	Structural Steel and Precast Concrete Contractors	\$2,090,384.38	0.7%
624229	Other Community Housing Services	\$1,878,292.62	0.6%
541370	Surveying and Mapping (except Geophysical) Services	\$1,833,230.38	0.6%
562111	Solid Waste Collection	\$1,813,789.62	0.6%
811111	General Automotive Repair	\$1,813,779.25	0.6%
237130	Power and Communication Line and Related Structures Construction	\$1,760,482.00	0.6%
541380	Testing Laboratories	\$1,705,551.75	0.6%
624190	Other Individual and Family Services	\$1,625,499.62	0.5%
485991	Special Needs Transportation	\$1,590,675.00	0.5%
238330	Flooring Contractors	\$1,539,890.12	0.5%
541211	Offices of Certified Public Accountants	\$1,525,754.50	0.5%
238150	Glass and Glazing Contractors	\$1,479,262.88	0.5%
561612	Security Guards and Patrol Services	\$1,414,280.50	0.5%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
624120	Services for the Elderly and Persons with Disabilities	\$1,244,034.00	0.4%
238320	Painting and Wall Covering Contractors	\$1,161,179.88	0.4%
493110	General Warehousing and Storage	\$1,067,321.75	0.3%
523930	Investment Advice	\$992,175.25	0.3%
238110	Poured Concrete Foundation and Structure Contractors	\$974,819.81	0.3%
624221	Temporary Shelters	\$867,760.38	0.3%
541990	All Other Professional, Scientific, and Technical Services	\$840,590.00	0.3%
238140	Masonry Contractors	\$780,894.69	0.3%
541620	Environmental Consulting Services	\$700,019.12	0.2%
541820	Public Relations Agencies	\$645,072.12	0.2%
561720	Janitorial Services	\$638,966.69	0.2%
541310	Architectural Services	\$612,529.56	0.2%
611710	Educational Support Services	\$570,000.00	0.2%
561990	All Other Support Services	\$557,403.81	0.2%
624210	Community Food Services	\$546,348.06	0.2%
238340	Tile and Terrazzo Contractors	\$520,949.47	0.2%
621112	Offices of Physicians, Mental Health Specialists	\$434,844.75	0.1%
541320	Landscape Architectural Services	\$375,127.12	0.1%
541110	Offices of Lawyers	\$307,954.12	0.1%
611699	All Other Miscellaneous Schools and Instruction	\$304,000.00	0.1%
541612	Human Resources Consulting Services	\$300,828.00	0.1%
562910	Remediation Services	\$290,517.31	0.1%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	\$268,955.69	0.1%
562991	Septic Tank and Related Services	\$267,707.16	0.1%
621511	Medical Laboratories	\$239,828.25	0.1%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	\$231,340.02	0.1%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238290	Other Building Equipment Contractors	\$217,517.00	0.1%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$148,044.80	0.0%
237120	Oil and Gas Pipeline and Related Structures Construction	\$131,815.62	0.0%
561710	Exterminating and Pest Control Services	\$129,753.00	0.04%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	\$115,548.59	0.04%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$115,138.12	0.04%
454110	Electronic Shopping and Mail-Order Houses	\$99,400.00	0.03%
541420	Industrial Design Services	\$96,590.00	0.03%
532111	Passenger Car Rental	\$76,461.60	0.02%
424690	Other Chemical and Allied Products Merchant Wholesalers	\$75,741.59	0.02%
424910	Farm Supplies Merchant Wholesalers	\$68,300.00	0.02%
236115	New Single-Family Housing Construction (except For-Sale Builders)	\$67,700.22	0.02%
541511	Custom Computer Programming Services	\$67,589.00	0.02%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	\$47,038.88	0.02%
561320	Temporary Help Services	\$46,894.80	0.02%
541613	Marketing Consulting Services	\$42,936.33	0.01%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	\$37,865.23	0.01%
541618	Other Management Consulting Services	\$32,512.80	0.01%
541720	Research and Development in the Social Sciences and Humanities	\$27,461.70	0.01%
444190	Other Building Material Dealers	\$27,205.48	0.01%
524126	Direct Property and Casualty Insurance Carriers	\$25,053.00	0.01%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	\$22,000.00	0.01%
236118	Residential Remodelers	\$20,510.09	0.01%

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238130	Framing Contractors	\$16,050.00	0.01%
488490	Other Support Activities for Road Transportation	\$15,993.76	0.01%
323111	Commercial Printing (except Screen and Books)	\$12,983.18	0.004%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	\$7,320.76	0.002%
541611	Administrative Management and General Management Consulting Services	\$7,100.00	0.002%
541930	Translation and Interpretation Services	\$4,848.85	0.002%
541922	Commercial Photography	\$4,000.00	0.001%
811490	Other Personal and Household Goods Repair and Maintenance	\$1,000.00	0.0003%
212321	Construction Sand and Gravel Mining	\$767.25	0.0002%
<b>TOTAL</b>			<b>100.0%</b>

Source: CHA analysis of Travis County data

**Table 4-5: Distribution of Contract Dollars by Race and Gender (total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
212321	\$0	\$767	\$0	\$0	\$767	\$0	\$767	\$0	\$767
236115	\$67,700	\$0	\$0	\$0	\$67,700	\$0	\$67,700	\$0	\$67,700
236118	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,510	\$20,510
236220	\$652,291	\$324,451	\$13,906,150	\$0	\$14,882,892	\$3,187,083	\$18,069,976	\$8,935,008	\$27,004,984
237110	\$0	\$737,828	\$292,650	\$0	\$1,030,478	\$1,413,238	\$2,443,716	\$787,362	\$3,231,078
237120	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$131,816	\$131,816

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
237130	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,760,482	\$1,760,482
237310	\$257,910	\$533,257	\$229,279	\$0	\$1,020,446	\$2,626,727	\$3,647,173	\$88,054,742	\$91,701,915
237990	\$0	\$0	\$0	\$0	\$0	\$73,711	\$73,711	\$2,022,180	\$2,095,891
238110	\$149,500	\$0	\$0	\$0	\$149,500	\$0	\$149,500	\$825,320	\$974,820
238120	\$0	\$25,088	\$1,305	\$0	\$26,392	\$0	\$26,392	\$2,063,992	\$2,090,384
238130	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$16,050	\$16,050
238140	\$56,430	\$104,472	\$0	\$0	\$160,902	\$0	\$160,902	\$619,993	\$780,895
238150	\$41,265	\$0	\$0	\$0	\$41,265	\$7,750	\$49,015	\$1,430,248	\$1,479,263
238160	\$0	\$511,913	\$0	\$0	\$511,913	\$42,617	\$554,530	\$2,141,855	\$2,696,385
238210	\$269,138	\$1,131,724	\$1,100,635	\$0	\$2,501,498	\$927,359	\$3,428,856	\$8,398,214	\$11,827,070
238220	\$216,351	\$530,280	\$1,940,942	\$0	\$2,687,573	\$1,131,664	\$3,819,237	\$36,415,095	\$40,234,332
238290	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$217,517	\$217,517
238310	\$0	\$171,793	\$0	\$0	\$171,793	\$753,867	\$925,660	\$5,687,323	\$6,612,983
238320	\$0	\$601,485	\$0	\$0	\$601,485	\$69,992	\$671,477	\$489,703	\$1,161,180
238330	\$0	\$168,555	\$45,864	\$0	\$214,419	\$971,837	\$1,186,256	\$353,634	\$1,539,890
238340	\$0	\$0	\$0	\$0	\$0	\$246,047	\$246,046	\$274,903	\$520,949
238350	\$738,172	\$23,300	\$0	\$0	\$761,472	\$349,569	\$1,111,041	\$1,020,508	\$2,131,549
238390	\$0	\$317,985	\$0	\$0	\$317,985	\$385,155	\$703,140	\$4,426,404	\$5,129,544
238910	\$0	\$0	\$637,065	\$0	\$637,065	\$1,413,980	\$2,051,045	\$4,842,198	\$6,893,243
238990	\$0	\$32,951	\$286,450	\$0	\$319,401	\$722,786	\$1,042,187	\$2,878,917	\$3,921,104
323111	\$0	\$0	\$0	\$0	\$0	\$12,983	\$12,983	\$0	\$12,983
423110	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$148,045	\$148,045
423120	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$268,956	\$268,956

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
423310	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$231,340	\$231,340
423320	\$0	\$16,154	\$0	\$0	\$16,154	\$0	\$16,154	\$98,984	\$115,138
423450	\$115,549	\$0	\$0	\$0	\$115,549	\$0	\$115,549	\$0	\$115,549
423510	\$0	\$0	\$0	\$0	\$0	\$20,878	\$20,878	\$26,161	\$47,039
423810	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$22,000	\$22,000
423850	\$0	\$0	\$7,321	\$0	\$7,321	\$0	\$7,321	\$0	\$7,321
423990	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$37,865	\$37,865
424690	\$0	\$0	\$75,742	\$0	\$75,742	\$0	\$75,742	\$0	\$75,742
424910	\$0	\$68,300	\$0	\$0	\$68,300	\$0	\$68,300	\$0	\$68,300
444190	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$27,205	\$27,205
454110	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$99,400	\$99,400
484220	\$6,778	\$1,668,875	\$7,345	\$0	\$1,682,997	\$5,911,456	\$7,594,453	\$531,140	\$8,125,593
485991	\$0	\$0	\$0	\$0	\$0	\$1,590,675	\$1,590,675	\$0	\$1,590,675
488490	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,994	\$15,994
493110	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,067,322	\$1,067,322
517410	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$11,959,848	\$11,959,848
523930	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$992,175	\$992,175
524126	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$25,053	\$25,053
531210	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,180,300	\$3,180,300
532111	\$0	\$0	\$76,462	\$0	\$76,462	\$0	\$76,462	\$0	\$76,462
541110	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$307,954	\$307,954
541211	\$0	\$0	\$0	\$0	\$0	\$1,525,755	\$1,525,755	\$0	\$1,525,755
541310	\$60,800	\$0	\$326,001	\$0	\$386,801	\$33,655	\$420,456	\$192,074	\$612,530

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
541320	\$0	\$103,130	\$6,555	\$0	\$109,685	\$34,590	\$144,275	\$230,852	\$375,127
541330	\$224,969	\$1,613,761	\$449,926	\$0	\$2,288,656	\$5,292,543	\$7,581,199	\$6,965,351	\$14,546,550
541370	\$140,282	\$79,191	\$0	\$0	\$219,473	\$1,516,276	\$1,735,748	\$97,482	\$1,833,230
541380	\$391,894	\$189,498	\$208,477	\$0	\$789,869	\$629,916	\$1,419,785	\$285,767	\$1,705,552
541420	\$0	\$96,590	\$0	\$0	\$96,590	\$0	\$96,590	\$0	\$96,590
541511	\$0	\$2,550	\$0	\$0	\$2,550	\$65,039	\$67,589	\$0	\$67,589
541611	\$0	\$7,100	\$0	\$0	\$7,100	\$0	\$7,100	\$0	\$7,100
541612	\$0	\$0	\$0	\$0	\$0	\$300,828	\$300,828	\$0	\$300,828
541613	\$42,936	\$0	\$0	\$0	\$42,936	\$0	\$42,936	\$0	\$42,936
541618	\$16,000	\$7,760	\$0	\$0	\$23,760	\$0	\$23,760	\$8,753	\$32,513
541620	\$0	\$0	\$12,632	\$0	\$12,632	\$617,953	\$630,584	\$69,435	\$700,019
541690	\$0	\$107,063	\$45,252	\$0	\$152,315	\$861,568	\$1,013,883	\$1,345,093	\$2,358,976
541720	\$0	\$0	\$0	\$0	\$0	\$21,467	\$21,467	\$5,995	\$27,462
541820	\$65,889	\$0	\$0	\$0	\$65,889	\$384,183	\$450,072	\$195,000	\$645,072
541922	\$4,000	\$0	\$0	\$0	\$4,000	\$0	\$4,000	\$0	\$4,000
541930	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,849	\$4,849
541990	\$0	\$0	\$0	\$0	\$0	\$176,520	\$176,520	\$664,070	\$840,590
561320	\$0	\$0	\$0	\$0	\$0	\$46,895	\$46,895	\$0	\$46,895
561612	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,414,280	\$1,414,280
561710	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$129,753	\$129,753
561720	\$0	\$0	\$10,061	\$427,284	\$437,344	\$0	\$437,344	\$201,623	\$638,967
561730	\$1,146,160	\$160,752	\$0	\$112,188	\$1,419,100	\$265,110	\$1,684,210	\$1,421,194	\$3,105,404
561990	\$0	\$37,700	\$0	\$0	\$37,700	\$6,356	\$44,057	\$513,347	\$557,404



NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
562111	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,813,790	\$1,813,790
562910	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$290,517	\$290,517
562991	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$267,707	\$267,707
611699	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$304,000	\$304,000
611710	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$570,000	\$570,000
621112	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$434,845	\$434,845
621498	\$0	\$0	\$0	\$0	\$0	\$2,124,990	\$2,124,990	\$721,258	\$2,846,248
621511	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$239,828	\$239,828
624110	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,296,570	\$7,296,570
624120	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,244,034	\$1,244,034
624190	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,625,500	\$1,625,500
624210	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$546,348	\$546,348
624221	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$867,760	\$867,760
624229	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,878,293	\$1,878,293
624310	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$12,140,486	\$12,140,486
811111	\$0	\$0	\$146,562	\$0	\$146,562	\$0	\$146,562	\$1,667,217	\$1,813,779
811490	\$0	\$0	\$0	\$0	\$0	\$1,000	\$1,000	\$0	\$1,000
<b>Total</b>	<b>\$4,664,013</b>	<b>\$9,374,274</b>	<b>\$19,812,673</b>	<b>\$539,472</b>	<b>\$34,390,432</b>	<b>\$35,764,017</b>	<b>\$70,154,449</b>	<b>\$238,506,787</b>	<b>\$308,661,236</b>

Source: CHA analysis of Travis County data

**Table 4-6: Distribution of Contract Dollars by Race and Gender**  
**(share of total dollars)**

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
212321	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
236115	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
236118	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236220	2.4%	1.2%	51.5%	0.0%	55.1%	11.8%	66.9%	33.1%	100.0%
237110	0.0%	22.8%	9.1%	0.0%	31.9%	43.7%	75.6%	24.4%	100.0%
237120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.3%	0.6%	0.3%	0.0%	1.1%	2.9%	4.0%	96.0%	100.0%
237990	0.0%	0.0%	0.0%	0.0%	0.0%	3.5%	3.5%	96.5%	100.0%
238110	15.3%	0.0%	0.0%	0.0%	15.3%	0.0%	15.3%	84.7%	100.0%
238120	0.0%	1.2%	0.1%	0.0%	1.3%	0.0%	1.3%	98.7%	100.0%
238130	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238140	7.2%	13.4%	0.0%	0.0%	20.6%	0.0%	20.6%	79.4%	100.0%
238150	2.8%	0.0%	0.0%	0.0%	2.8%	0.5%	3.3%	96.7%	100.0%
238160	0.0%	19.0%	0.0%	0.0%	19.0%	1.6%	20.6%	79.4%	100.0%
238210	2.3%	9.6%	9.3%	0.0%	21.2%	7.8%	29.0%	71.0%	100.0%
238220	0.5%	1.3%	4.8%	0.0%	6.7%	2.8%	9.5%	90.5%	100.0%
238290	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238310	0.0%	2.6%	0.0%	0.0%	2.6%	11.4%	14.0%	86.0%	100.0%
238320	0.0%	51.8%	0.0%	0.0%	51.8%	6.0%	57.8%	42.2%	100.0%
238330	0.0%	10.9%	3.0%	0.0%	13.9%	63.1%	77.0%	23.0%	100.0%
238340	0.0%	0.0%	0.0%	0.0%	0.0%	47.2%	47.2%	52.8%	100.0%
238350	34.6%	1.1%	0.0%	0.0%	35.7%	16.4%	52.1%	47.9%	100.0%
238390	0.0%	6.2%	0.0%	0.0%	6.2%	7.5%	13.7%	86.3%	100.0%
238910	0.0%	0.0%	9.2%	0.0%	9.2%	20.5%	29.8%	70.2%	100.0%
238990	0.0%	0.8%	7.3%	0.0%	8.1%	18.4%	26.6%	73.4%	100.0%
323111	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

Travis County Disparity Study 2021

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
423120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423320	0.0%	14.0%	0.0%	0.0%	14.0%	0.0%	14.0%	86.0%	100.0%
423450	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
423510	0.0%	0.0%	0.0%	0.0%	0.0%	44.4%	44.4%	55.6%	100.0%
423810	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423850	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
423990	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
424690	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
424910	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
444190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
454110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
484220	0.1%	20.5%	0.1%	0.0%	20.7%	72.8%	93.5%	6.5%	100.0%
485991	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
488490	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
493110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
517410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
523930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
524126	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
531210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
532111	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541211	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541310	9.9%	0.0%	53.2%	0.0%	63.1%	5.5%	68.6%	31.4%	100.0%
541320	0.0%	27.5%	1.7%	0.0%	29.2%	9.2%	38.5%	61.5%	100.0%
541330	1.5%	11.1%	3.1%	0.0%	15.7%	36.4%	52.1%	47.9%	100.0%
541370	7.7%	4.3%	0.0%	0.0%	12.0%	82.7%	94.7%	5.3%	100.0%
541380	23.0%	11.1%	12.2%	0.0%	46.3%	36.9%	83.2%	16.8%	100.0%
541420	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541511	0.0%	3.8%	0.0%	0.0%	3.8%	96.2%	100.0%	0.0%	100.0%

Travis County Disparity Study 2021

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
541611	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541612	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541613	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541618	49.2%	23.9%	0.0%	0.0%	73.1%	0.0%	73.1%	26.9%	100.0%
541620	0.0%	0.0%	1.8%	0.0%	1.8%	88.3%	90.1%	9.9%	100.0%
541690	0.0%	4.5%	1.9%	0.0%	6.5%	36.5%	43.0%	57.0%	100.0%
541720	0.0%	0.0%	0.0%	0.0%	0.0%	78.2%	78.2%	21.8%	100.0%
541820	10.2%	0.0%	0.0%	0.0%	10.2%	59.6%	69.8%	30.2%	100.0%
541922	100.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%	0.0%	100.0%
541930	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	0.0%	0.0%	0.0%	0.0%	0.0%	21.0%	21.0%	79.0%	100.0%
561320	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
561612	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561720	0.0%	0.0%	1.6%	66.9%	68.4%	0.0%	68.4%	31.6%	100.0%
561730	36.9%	5.2%	0.0%	3.6%	45.7%	8.5%	54.2%	45.8%	100.0%
561990	0.0%	6.8%	0.0%	0.0%	6.8%	1.1%	7.9%	92.1%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562910	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
562991	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
611699	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
611710	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621112	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
621498	0.0%	0.0%	0.0%	0.0%	0.0%	74.7%	74.7%	25.3%	100.0%
621511	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624190	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624221	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
624229	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
811111	0.0%	0.0%	8.1%	0.0%	8.1%	0.0%	8.1%	91.9%	100.0%
811490	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
<b>Total</b>	<b>1.5%</b>	<b>3.0%</b>	<b>6.4%</b>	<b>0.2%</b>	<b>11.1%</b>	<b>11.6%</b>	<b>22.7%</b>	<b>77.3%</b>	<b>100.0%</b>

Source: CHA analysis of Travis County data

### 3. Availability of M/WBEs in Travis County's Geographic and Product Market

Estimates of the availability of M/WBEs in Travis County's geographic market are a critical component of Travis County's compliance with its constitutional obligations to ensure its program is narrowly tailored. As discussed in Chapter II, the courts require that the availability estimates reflect the number of "ready, willing and able" firms that can perform on specific types of work involved in the recipient's prime contracts and associated subcontracts. Availability estimates are also crucial for the County to determine its annual M/WBE goal and to set narrowly tailored contract goals. To examine whether M/WBEs are receiving full opportunities on Travis County contracts, these narrowly tailored availability estimates were compared to the utilization percentage of dollars received by M/WBEs, discussed below under our disparity analysis section.

We applied the "custom census" approach with refinements to estimating availability, discussed in Chapter II. Using this framework, CHA utilized three databases to estimate availability:

1. The Final Contract Data File (described in Section B of this Chapter).
2. The Master M/WBE Directory compiled by CHA.
3. Dun & Bradstreet/Hoovers Database downloaded from the companies' website.

First, we eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes and without this elimination of duplicate listings, the availability database would be artificially large. This list of unique firms comprised the first component of the study's availability determination.

We utilized the Texas Unified Certification Directory, the South Central Regional Certification Agency Directory, the City of Austin Certified Directory and the Travis County Contract Data File to compile the Master Directory. We

limited the firms we used in our analysis to those operating within the County's product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company for minority- and woman-owned firms and non-M/WBEs. Hoovers maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in Travis County's market area in order to form our custom Dun & Bradstreet/Hoovers Database. In the initial download, the data from Hoovers simply identified a firm as being minority-owned.<sup>182</sup> However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers by special request.

The Hoovers database is the most comprehensive list of minority-owned and woman-owned businesses available. It is developed from the efforts of a national firm whose business is collecting business information. Hoovers builds its database from over 250 sources, including information from government sources and various associations, and its own efforts. Hoovers conducts an audit of the preliminary database prior to the public release of the data. That audit must result in a minimum of 94% accuracy. Once published, Hoovers has an established protocol to regularly refresh its data. This protocol involves updating any third-party lists that were used and contacting a selection of firms via Hoover's own call centers.

We merged these three databases to form an accurate estimate of firms available to work on Travis County contracts. For an extended explanation of how unweighted and weighted availability are calculated, please see Appendix D.

Tables 4-7 through 4-9 present data on:

1. The unweighted availability percentages by race and gender and by NAICS codes for Travis County's product market. These results can be used by the County as the starting point to set narrowly tailored contract-specific goals;
2. The weights used to adjust the unweighted numbers;<sup>183</sup> and
3. The final estimates of the weighted averages of the individual 6-digit level availability estimates in Travis County's market area.

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182. The variable is labeled: "Is Minority Owned" and values for the variable can be either "1" (for yes) or blank.

183. These weights are equivalent to the share of contract dollars presented in the previous section.

We “weighted” the availability data for two reasons. First, the weighted availability represents the share of total possible contractors for each demographic group, weighted by the distribution of contract dollars across the NAICS codes in which Travis County spends its dollars. Weighting is necessary because the disparity ratio, discussed below, must be an “apples-to-apples” comparison. The numerator – the utilization rate – is measured in dollars *not* the number of firms. Therefore, the denominator – availability – must be measured in dollars, not the number of firms.

Second, weighting also reflects the importance of the availability of a demographic group in a particular NAICS code, that is, how important that NAICS code is to Travis County’s contracting patterns. For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are M/WBEs; hence, M/WBE availability would be 60%. However, if the County spends only one percent of its contract dollars in this NAICS code, then this high availability would be offset by the low level of spending in that NAICS code. In contrast, if Travis County spent 25% of its contract dollars in NAICS Code 123456, then the same availability would carry a greater weight.

To calculate the weighted availability for each NAICS code, we first determined the unweighted availability for each demographic group in each NAICS code (presented in Table 4-7). In the previous example, the unweighted availability for M/WBEs in NAICS Code 123456 is 60%. We then multiplied the unweighted availability by the share of Travis County spending in that NAICS code presented in Table 4-8. This share is the *weight*. Using the previous example where Travis County spending in NAICS Code 123456 was one percent, the component of M/WBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent.

We performed this calculation for each NAICS code and then summed all of the individual components for each demographic group to determine the weighted availability for that group. The results of this calculation are presented in Table 4-9.

For additional explication of weighting, please see Appendix D.

**Table 4-7: Unweighted M/WBE Availability for Travis County Contracts**

NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
212321	0.0%	14.3%	0.0%	0.0%	14.3%	0.0%	14.3%	85.7%	100.0%
236115	0.3%	0.8%	0.9%	0.0%	2.0%	0.9%	2.9%	97.1%	100.0%
236118	0.4%	1.2%	2.3%	0.0%	3.9%	2.6%	6.4%	93.6%	100.0%
236220	3.7%	6.9%	7.9%	0.6%	19.2%	10.5%	29.6%	70.4%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
237110	0.4%	9.9%	6.3%	0.0%	16.5%	6.3%	22.9%	77.1%	100.0%
237120	0.0%	0.0%	0.0%	0.0%	0.0%	3.4%	3.4%	96.6%	100.0%
237130	0.0%	17.1%	0.0%	0.0%	17.1%	11.4%	28.6%	71.4%	100.0%
237310	3.9%	11.0%	1.8%	0.3%	17.1%	7.6%	24.7%	75.3%	100.0%
237990	1.9%	8.7%	11.7%	0.0%	22.3%	4.9%	27.2%	72.8%	100.0%
238110	0.8%	4.2%	0.2%	0.2%	5.3%	2.0%	7.3%	92.7%	100.0%
238120	0.0%	15.9%	13.0%	1.4%	30.4%	14.5%	44.9%	55.1%	100.0%
238130	0.0%	0.7%	0.5%	0.0%	1.2%	2.1%	3.3%	96.7%	100.0%
238140	2.0%	6.3%	2.8%	0.0%	11.0%	3.9%	15.0%	85.0%	100.0%
238150	2.8%	2.8%	9.9%	0.0%	15.5%	7.0%	22.5%	77.5%	100.0%
238160	0.1%	2.0%	0.5%	0.1%	2.7%	1.9%	4.5%	95.5%	100.0%
238210	0.5%	2.5%	1.7%	0.2%	4.9%	4.9%	9.9%	90.1%	100.0%
238220	0.4%	1.6%	2.5%	0.0%	4.6%	2.5%	7.1%	92.9%	100.0%
238290	1.4%	1.4%	47.3%	1.4%	51.4%	2.7%	54.1%	45.9%	100.0%
238310	0.3%	3.2%	0.3%	0.3%	4.1%	5.9%	10.0%	90.0%	100.0%
238320	0.1%	2.6%	1.4%	0.2%	4.3%	1.6%	5.9%	94.1%	100.0%
238330	0.8%	5.4%	11.6%	0.0%	17.8%	7.8%	25.6%	74.4%	100.0%
238340	1.0%	1.5%	2.0%	0.5%	5.0%	4.0%	9.0%	91.0%	100.0%
238350	1.7%	2.8%	0.6%	0.0%	5.0%	2.8%	7.8%	92.2%	100.0%
238390	0.5%	3.7%	0.5%	0.5%	5.1%	5.1%	10.2%	89.8%	100.0%
238910	0.4%	6.1%	4.1%	0.0%	10.6%	8.1%	18.7%	81.3%	100.0%
238990	0.3%	2.2%	0.2%	0.1%	2.8%	3.0%	5.7%	94.3%	100.0%
323111	0.2%	0.2%	0.0%	0.0%	0.4%	9.5%	10.0%	90.0%	100.0%
423110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
423120	0.0%	0.0%	0.0%	0.0%	0.0%	3.5%	3.5%	96.5%	100.0%
423310	0.0%	1.2%	4.1%	0.4%	5.7%	2.0%	7.7%	92.3%	100.0%
423320	0.0%	2.1%	25.1%	0.4%	27.7%	3.0%	30.6%	69.4%	100.0%
423450	3.2%	4.1%	17.4%	0.0%	24.7%	7.8%	32.4%	67.6%	100.0%
423510	0.0%	2.2%	0.0%	1.1%	3.3%	8.8%	12.1%	87.9%	100.0%
423810	1.7%	3.3%	5.0%	0.0%	10.0%	6.7%	16.7%	83.3%	100.0%



NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
423850	0.7%	0.7%	5.1%	0.0%	6.5%	7.2%	13.8%	86.2%	100.0%
423990	0.4%	0.6%	0.7%	0.0%	1.7%	4.4%	6.0%	94.0%	100.0%
424690	0.0%	2.8%	15.9%	0.9%	19.6%	4.7%	24.3%	75.7%	100.0%
424910	0.0%	1.4%	0.0%	0.0%	1.4%	1.4%	2.9%	97.1%	100.0%
444190	0.0%	0.3%	1.5%	0.0%	1.8%	3.0%	4.8%	95.2%	100.0%
454110	0.9%	0.6%	1.5%	0.0%	3.0%	9.6%	12.6%	87.4%	100.0%
484220	6.3%	20.3%	7.8%	0.0%	34.4%	14.1%	48.4%	51.6%	100.0%
485991	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
488490	0.0%	4.1%	50.7%	0.0%	54.8%	1.4%	56.2%	43.8%	100.0%
493110	0.0%	0.0%	1.0%	0.0%	1.0%	1.2%	2.2%	97.8%	100.0%
517410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
523930	0.2%	0.2%	0.2%	0.0%	0.5%	1.3%	1.8%	98.2%	100.0%
524126	0.0%	0.0%	0.0%	0.0%	0.0%	0.8%	0.8%	99.2%	100.0%
531210	0.1%	0.2%	0.1%	0.0%	0.5%	2.9%	3.3%	96.7%	100.0%
532111	0.0%	0.8%	1.5%	0.0%	2.3%	0.0%	2.3%	97.7%	100.0%
541110	0.2%	0.5%	0.8%	0.0%	1.5%	4.7%	6.2%	93.8%	100.0%
541211	0.6%	0.5%	0.6%	0.0%	1.7%	6.0%	7.7%	92.3%	100.0%
541310	1.3%	2.9%	1.1%	0.2%	5.5%	11.1%	16.6%	83.4%	100.0%
541320	0.0%	1.7%	0.8%	0.0%	2.5%	4.6%	7.1%	92.9%	100.0%
541330	1.6%	7.0%	2.2%	0.2%	10.9%	8.6%	19.5%	80.5%	100.0%
541370	2.3%	7.9%	8.3%	0.9%	19.4%	17.1%	36.6%	63.4%	100.0%
541380	0.9%	2.3%	2.0%	0.0%	5.2%	2.3%	7.5%	92.5%	100.0%
541420	0.4%	1.2%	86.2%	0.0%	87.8%	2.0%	89.8%	10.2%	100.0%
541511	0.9%	1.2%	0.4%	0.1%	2.8%	4.5%	7.2%	92.8%	100.0%
541611	1.9%	1.4%	6.7%	0.1%	10.3%	6.7%	17.0%	83.0%	100.0%
541612	5.7%	0.4%	21.1%	0.0%	27.2%	16.2%	43.4%	56.6%	100.0%
541613	0.9%	0.6%	3.1%	0.0%	4.6%	4.2%	8.8%	91.2%	100.0%
541618	0.5%	0.6%	0.4%	0.0%	1.5%	3.0%	4.5%	95.5%	100.0%
541620	1.1%	2.8%	17.7%	0.0%	21.6%	17.0%	38.5%	61.5%	100.0%
541690	2.9%	2.5%	3.9%	0.0%	9.3%	9.1%	18.4%	81.6%	100.0%

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NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
541720	0.0%	0.5%	0.5%	0.0%	1.1%	9.0%	10.1%	89.9%	100.0%
541820	4.3%	2.6%	3.3%	0.0%	10.2%	17.0%	27.2%	72.8%	100.0%
541922	2.2%	0.9%	1.8%	0.0%	4.9%	7.1%	12.1%	87.9%	100.0%
541930	0.0%	5.4%	56.4%	0.0%	61.8%	10.3%	72.1%	27.9%	100.0%
541990	0.4%	0.5%	2.9%	0.0%	3.8%	4.5%	8.3%	91.7%	100.0%
561320	1.6%	4.0%	15.5%	0.0%	21.1%	7.2%	28.3%	71.7%	100.0%
561612	1.6%	1.6%	28.2%	0.0%	31.5%	2.8%	34.3%	65.7%	100.0%
561710	0.3%	0.0%	50.6%	0.0%	51.0%	1.6%	52.5%	47.5%	100.0%
561720	1.9%	2.1%	4.1%	0.2%	8.2%	4.3%	12.6%	87.4%	100.0%
561730	1.3%	1.8%	2.9%	0.1%	6.1%	2.6%	8.8%	91.2%	100.0%
561990	0.7%	0.9%	0.1%	0.1%	1.9%	3.2%	5.1%	94.9%	100.0%
562111	0.0%	0.0%	0.0%	0.0%	0.0%	20.0%	20.0%	80.0%	100.0%
562910	0.0%	5.8%	61.5%	0.0%	67.3%	7.7%	75.0%	25.0%	100.0%
562991	0.0%	3.5%	13.0%	0.0%	16.5%	2.6%	19.1%	80.9%	100.0%
611699	0.6%	0.7%	2.5%	0.1%	4.0%	6.4%	10.3%	89.7%	100.0%
611710	1.5%	1.0%	66.1%	0.0%	68.5%	9.3%	77.8%	22.2%	100.0%
621112	0.5%	0.0%	5.9%	0.0%	6.4%	2.7%	9.1%	90.9%	100.0%
621498	0.3%	0.1%	0.9%	0.0%	1.3%	4.0%	5.3%	94.7%	100.0%
621511	0.7%	0.0%	6.2%	0.0%	6.8%	4.1%	11.0%	89.0%	100.0%
624110	0.0%	0.0%	35.8%	0.0%	35.8%	0.0%	35.8%	64.2%	100.0%
624120	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624190	0.0%	0.0%	1.1%	0.0%	1.2%	0.0%	1.2%	98.8%	100.0%
624210	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624221	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624229	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
624310	0.5%	0.0%	68.6%	0.0%	69.0%	4.2%	73.2%	26.8%	100.0%
811111	0.1%	0.3%	0.4%	0.0%	0.8%	1.4%	2.2%	97.8%	100.0%
811490	0.3%	1.0%	1.0%	0.0%	2.3%	7.7%	10.0%	90.0%	100.0%
<b>Total</b>	<b>0.6%</b>	<b>1.3%</b>	<b>3.3%</b>	<b>0.1%</b>	<b>5.3%</b>	<b>3.9%</b>	<b>9.2%</b>	<b>90.8%</b>	<b>100.0%</b>

Source: CHA analysis of Travis County data; Hoovers; CHA Master Directory

**Table 4-8: Distribution of Travis County Spending by NAICS Code (the Weights)**

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
212321	Construction Sand and Gravel Mining	0.0002%
236115	New Single-Family Housing Construction (except For-Sale Builders)	0.02%
236118	Residential Remodelers	0.01%
236220	Commercial and Institutional Building Construction	8.75%
237110	Water and Sewer Line and Related Structures Construction	1.05%
237120	Oil and Gas Pipeline and Related Structures Construction	0.04%
237130	Power and Communication Line and Related Structures Construction	0.57%
237310	Highway, Street, and Bridge Construction	29.71%
237990	Other Heavy and Civil Engineering Construction	0.68%
238110	Poured Concrete Foundation and Structure Contractors	0.32%
238120	Structural Steel and Precast Concrete Contractors	0.68%
238130	Framing Contractors	0.01%
238140	Masonry Contractors	0.25%
238150	Glass and Glazing Contractors	0.48%
238160	Roofing Contractors	0.87%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.83%
238220	Plumbing, Heating, and Air-Conditioning Contractors	13.04%
238290	Other Building Equipment Contractors	0.07%
238310	Drywall and Insulation Contractors	2.14%
238320	Painting and Wall Covering Contractors	0.38%
238330	Flooring Contractors	0.50%
238340	Tile and Terrazzo Contractors	0.17%
238350	Finish Carpentry Contractors	0.69%
238390	Other Building Finishing Contractors	1.66%
238910	Site Preparation Contractors	2.23%
238990	All Other Specialty Trade Contractors	1.27%
323111	Commercial Printing (except Screen and Books)	0.004%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0.05%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.09%
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	0.07%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.04%
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	0.04%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.02%
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	0.01%
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	0.002%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.01%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.02%
424910	Farm Supplies Merchant Wholesalers	0.02%
444190	Other Building Material Dealers	0.01%
454110	Electronic Shopping and Mail-Order Houses	0.03%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.63%
485991	Special Needs Transportation	0.52%
488490	Other Support Activities for Road Transportation	0.01%
493110	General Warehousing and Storage	0.35%
517410	Satellite Telecommunications	3.87%
523930	Investment Advice	0.32%
524126	Direct Property and Casualty Insurance Carriers	0.01%
531210	Offices of Real Estate Agents and Brokers	1.03%
532111	Passenger Car Rental	0.02%
541110	Offices of Lawyers	0.10%
541211	Offices of Certified Public Accountants	0.49%
541310	Architectural Services	0.20%
541320	Landscape Architectural Services	0.12%
541330	Engineering Services	4.71%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
541370	Surveying and Mapping (except Geophysical) Services	0.59%
541380	Testing Laboratories	0.55%
541420	Industrial Design Services	0.03%
541511	Custom Computer Programming Services	0.02%
541611	Administrative Management and General Management Consulting Services	0.002%
541612	Human Resources Consulting Services	0.10%
541613	Marketing Consulting Services	0.01%
541618	Other Management Consulting Services	0.01%
541620	Environmental Consulting Services	0.23%
541690	Other Scientific and Technical Consulting Services	0.76%
541720	Research and Development in the Social Sciences and Humanities	0.01%
541820	Public Relations Agencies	0.21%
541922	Commercial Photography	0.001%
541930	Translation and Interpretation Services	0.002%
541990	All Other Professional, Scientific, and Technical Services	0.27%
561320	Temporary Help Services	0.02%
561612	Security Guards and Patrol Services	0.46%
561710	Exterminating and Pest Control Services	0.04%
561720	Janitorial Services	0.21%
561730	Landscaping Services	1.01%
561990	All Other Support Services	0.18%
562111	Solid Waste Collection	0.59%
562910	Remediation Services	0.09%
562991	Septic Tank and Related Services	0.09%
611699	All Other Miscellaneous Schools and Instruction	0.10%
611710	Educational Support Services	0.18%
621112	Offices of Physicians, Mental Health Specialists	0.14%
621498	All Other Outpatient Care Centers	0.92%
621511	Medical Laboratories	0.08%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
624110	Child and Youth Services	2.36%
624120	Services for the Elderly and Persons with Disabilities	0.40%
624190	Other Individual and Family Services	0.53%
624210	Community Food Services	0.18%
624221	Temporary Shelters	0.28%
624229	Other Community Housing Services	0.61%
624310	Vocational Rehabilitation Services	3.93%
811111	General Automotive Repair	0.59%
811490	Other Personal and Household Goods Repair and Maintenance	0.0003%
<b>Total</b>		<b>100.0%</b>

Source: CHA analysis of Travis County data

We next determined the aggregated availability of M/WBEs, weighted by Travis County's spending in its geographic and industry markets, to be 21.5% for the County's contracts. Table 4-9 presents the total weighted availability data for each of the racial and gender categories.

The overall, weighted M/WBE availability results can be used by Travis County to determine its overall, aspirational goal.

**Table 4-9: Aggregated Weighted Availability for Travis County Contracts**

Black	Hispanic	Asian	Native American	MBE	White Women	M/WBE	Non-M/WBE	Total
2.0%	6.0%	6.6%	0.2%	14.8%	6.6%	21.5%	78.5%	100.0%

Source: CHA analysis of Travis County data; Hoovers; CHA Master Directory

#### 4. Further Analysis of Weighted Availability

Given that Hispanics comprise approximately one third of the overall population of Travis County<sup>184</sup>, the low weighted availability for Hispanics suggested the need for further exploration of the data. As noted above, weighted availability is a function of the share of the County's spending each code receives (the weight) and the number of firms that can perform the work (the unweighted availability). We therefore examined the presence of Hispanic

184. <https://www.census.gov/quickfacts/traviscountytexas>.

firms in those codes with a large number of total firms and the presence of Hispanic firms in those codes with the largest weights.

Table 4-10 lists the ten NAICS codes with the largest number of firms in the availability database. We analyze the numbers of firms to examine how broadly opportunities are dispersed between various groups. Overall, these ten codes contain 60.6% of all firms in the database.

**Table 4-10: Ten NAICS Codes with the Largest Number of Firms in the Availability Database**

NAICS	NAICS Code Label	Share of Total Unweighted Availability
541618	Other Management Consulting Services	11.3%
561990	All Other Support Services	10.1%
531210	Offices of Real Estate Agents and Brokers	8.5%
541990	All Other Professional, Scientific, and Technical Services	7.2%
236115	New Single-Family Housing Construction (except For-Sale Builders)	6.6%
541110	Offices of Lawyers	4.7%
541611	Administrative Management and General Management Consulting Services	3.4%
541511	Custom Computer Programming Services	3.1%
238990	All Other Specialty Trade Contractors	2.9%
624190	Other Individual and Family Services	2.7%

*Source: CHA analysis of Travis County data*

Table 4-11 presents data on the racial and gender distribution of the firms in these ten NAICS codes. Very few Hispanic firms work in these ten codes: the Hispanic share of each code ranges from 2.2% in NAICS code 238990 to 0.0% in NAICS code 624190. Overall, Hispanic firms comprise just 0.7% of all firms in top 10 NAICS codes.

**Table 4-11: Ten NAICS Codes with the Largest Number of Firms in the Availability Database by Race and Gender (share of all firms)**

NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
541618	0.5%	0.6%	0.4%	0.0%	1.5%	3.0%	4.5%	95.5%	100.0%
561990	0.7%	0.9%	0.1%	0.1%	1.9%	3.2%	5.1%	94.9%	100.0%
531210	0.1%	0.2%	0.1%	0.0%	0.5%	2.9%	3.3%	96.7%	100.0%

NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
541990	0.4%	0.5%	2.9%	0.0%	3.8%	4.5%	8.3%	91.7%	100.0%
236115	0.3%	0.8%	0.9%	0.0%	2.0%	0.9%	2.9%	97.1%	100.0%
541110	0.2%	0.5%	0.8%	0.0%	1.5%	4.7%	6.2%	93.8%	100.0%
541611	1.9%	1.4%	6.7%	0.1%	10.3%	6.7%	17.0%	83.0%	100.0%
541511	0.9%	1.2%	0.4%	0.1%	2.8%	4.5%	7.2%	92.8%	100.0%
238990	0.3%	2.2%	0.2%	0.1%	2.8%	3.0%	5.7%	94.3%	100.0%
624190	0.0%	0.0%	1.1%	0.0%	1.2%	0.0%	1.2%	98.8%	100.0%

Source: CHA analysis of Travis County data

Table 4-12 presents the ten NAICS codes that contain the highest share of Travis County spending (the weight). These ten NAICS codes capture 75.1% of all spending by the County.

**Table 4-12: Ten NAICS Codes with the Highest Share of Travis County Spending**

NAICS	NAICS Code Label	Weight
237310	Highway, Street, and Bridge Construction	29.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	13.0%
236220	Commercial and Institutional Building Construction	8.7%
541330	Engineering Services	4.7%
624310	Vocational Rehabilitation Services	3.9%
517410	Satellite Telecommunications	3.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.8%
484220	Specialized Freight (except Used Goods) Trucking, Local	2.6%
624110	Child and Youth Services	2.4%
238910	Site Preparation Contractors	2.2%

Source: CHA analysis of Travis County data

Table 4-13 presents the racial and gender distribution of this spending. With the exception of NAICS codes 541330, 238210, and 484220, the Hispanic share of spending in these key codes is under 1.3% and the figure is 0.0% in four of the codes.



**Table 4-13: Distribution of Contract Dollars in Top Ten NAICS Codes by Race and Gender**  
(share of total dollars)

NAICS	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE	Total
237310	0.3%	0.6%	0.3%	0.0%	1.1%	2.9%	4.0%	96.0%	100.0%
238220	0.5%	1.3%	4.8%	0.0%	6.7%	2.8%	9.5%	90.5%	100.0%
236220	2.4%	1.2%	51.5%	0.0%	55.1%	11.8%	66.9%	33.1%	100.0%
541330	1.5%	11.1%	3.1%	0.0%	15.7%	36.4%	52.1%	47.9%	100.0%
624310	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
517410	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238210	2.3%	9.6%	9.3%	0.0%	21.2%	7.8%	29.0%	71.0%	100.0%
484220	0.1%	20.5%	0.1%	0.0%	20.7%	72.8%	93.5%	6.5%	100.0%
624110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238910	0.0%	0.0%	9.2%	0.0%	9.2%	20.5%	29.8%	70.2%	100.0%

*Source: CHA analysis of Travis County data*

From these additional analyses, we conclude the low presence of Hispanic firms in key NAICS codes explains why the overall weighted availability figure for Hispanics was an unexpected 6.0%.

## 5. Analysis of the Concentration of Contract Dollars among Firms

In addition to examining the level of M/WBE and non-M/WBE contract dollars utilization, another important dimension to a disparity analysis is the level of contract dollars concentration among M/WBE and non-M/WBE firms. This approach is important because the success of a group in receiving contract dollars may be caused by an unusual amount of dollars concentrated among a few firms. If that is the case, then a race- or gender-based remedial program may still be supportable even though a few firms have been able to overcome discriminatory barriers. This section presents data to examine this issue. For each demographic group, we identified the three NAICS codes where the group receives the largest share of the County's spending. We then compared the concentration of contract dollars among the three largest firms for that group to the concentration of contract dollars among the three largest non-M/WBE firms. Tables 4-14 through 4-29 presents this analysis.

Tables 4-14 through 4-17 present data for Black-owned firms. Table 4-14 presents the three NAICS codes where Black firms receive the largest share of their contract dollars. While these codes comprise 54.4% of all Black contract dollars, the corresponding figure for non-M/WBEs is 4.8%. Table 4-15 presents

data on the firm concentration in NAICS 561730. Here, one firm received 85.9% of all Black contract dollars; in contrast, the top non-M/WBE firm received only 25.7% of all non-M/WBE dollars. Table 4-16 presents data on the firm concentration in NAICS 238350. One firm received all Black contract dollars; in contrast, the top non-M/WBE firm received only 64.0% of all non-M/WBE dollars. Table 4-17 presents data on the firm concentration in NAICS 236220. Here, one firm received 99.8% of all Black contract dollars; in contrast, the top non-M/WBE firm received only 71.7% of all non-M/WBE dollars.

**Table 4-14: Three NAICS Codes where Black Firms Receive the Most Spending**

NAICS	NAICS Code Label	Weight	Share of Total Black Dollars	Share of Total Non-M/WBE Dollars
561730	Landscaping Services	1.0%	24.6%	0.6%
238350	Finish Carpentry Contractors	0.7%	15.8%	0.4%
236220	Commercial and Institutional Building Construction	8.7%	14.0%	3.7%

*Source: CHA analysis of Travis County data*

**Table 4-15: Comparison of Black and Non-M/WBE Firm Concentration**

**NAICS Code: 561730 Landscaping Services**

NAICS	Black	Non-M/WBE
Number of Contracts	5	11
Number of Firms	3	10
Share of #1	85.9%	25.7%
Share of #2	8.2%	19.7%
Share of #3	5.8%	15.8%
Share of Top 3	100.0%	61.2%

*Source: CHA analysis of Travis County data*

**Table 4-16: Comparison of Black and Non-M/WBE Firm Concentration**  
**NAICS Code: 238350 Finish Carpentry Contractors**

NAICS	Black	Non-M/WBE
Number of Contracts	1	7
Number of Firms	1	7
Share of #1	100.0%	64.0%
Share of #2	0.0%	22.5%
Share of #3	0.0%	6.0%
Share of Top 3	100.0%	92.6%

*Source: CHA analysis of Travis County data*

**Table 4-17: Comparison of Black and Non-M/WBE Firm Concentration**  
**NAICS Code: 236220 Commercial and Institutional Building Construction**

NAICS	Black	Non-M/WBE
Number of Contracts	2	5
Number of Firms	2	4
Share of #1	99.8%	71.7%
Share of #2	0.2%	28.1%
Share of #3	0.0%	0.2%
Share of Top 3	100.0%	100.0%

*Source: CHA analysis of Travis County data*

Tables 4-18 through 4-21 contain data for Hispanic-owned firms. Table 4-18 presents the three NAICS codes where Hispanic firms received the largest share of their contract dollars. As with the Black-owned firms, codes that accounted for a large share of dollars to Hispanic-owned firms did not account for a significant share of dollars to non-M/WBE firms. Hispanic-owned firms in these codes captured 47.1% of all Hispanic contract dollars. For non-M/WBE firms, the corresponding figure was 6.7%. Table 4-19 presents data on the firm concentration in NAICS 484220. Here, the top three firms received 92.3% of all Hispanic contract dollars; in contrast, the top non-M/WBE firm received 64.3% of all non-M/WBE dollars. Table 4-20 presents data on the firm concentration in NAICS 541330. In this NAICS code, the Hispanic and non-M/WBE numbers were roughly identical. Table 4-21 presents data on the firm concentration in NAICS 238210. While the share of revenue received by the top three firms is

close, only three Hispanic-owned firms received contracts in this code, in contrast to 14 non-M/WBE firms that received contracts.

**Table 4-18: Three NAICS Codes where Hispanic Firms Receive the Most Spending**

NAICS	NAICS Code Label	Weight	Share of Total Hispanic Dollars	Share of Total Non-M/WBE Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	2.63%	17.8%	0.2%
541330	Engineering Services	4.71%	17.2%	2.9%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.83%	12.1%	3.5%

Source: CHA analysis of Travis County data

**Table 4-19: Comparison of Hispanic and Non-M/WBE Firm Concentration  
NAICS Code:484220 Specialized Freight (except Used Goods) Trucking, Local**

NAICS	Hispanic	Non-M/WBE
Number of Contracts	26	30
Number of Firms	10	12
Share of #1	58.6%	28.8%
Share of #2	27.3%	20.3%
Share of #3	6.4%	15.2%
Share of Top 3	92.3%	64.3%

Source: CHA analysis of Travis County data

**Table 4-20: Comparison of Hispanic and Non-M/WBE Firm Concentration****NAICS Code: 541330 Engineering Services**

NAICS	Hispanic	Non-M/WBE
Number of Contracts	27	25
Number of Firms	16	21
Share of #1	14.8%	18.3%
Share of #2	14.6%	13.9%
Share of #3	14.5%	11.3%
Share of Top 3	43.9%	43.5%

*Source: CHA analysis of Travis County data*

**Table 4-21: Comparison of Hispanic and Non-M/WBE Firm Concentration**  
**NAICS Code: 238210 Electrical Contractors and Other Wiring Installation Contractors**

NAICS	Hispanic	Non-M/WBE
Number of Contracts	4	18
Number of Firms	3	14
Share of #1	56.1%	56.4%
Share of #2	30.1%	17.7%
Share of #3	13.9%	7.9%
Share of Top 3	100.0%	82.0%

*Source: CHA analysis of Travis County data*

Tables 4-22 through 4-25 contain data for Asian-owned firms. Table 4-22 presents the three NAICS codes where Asian-owned firms received the largest share of their contract dollars. While these codes contributed 85.0% to all Asian contract dollars, the corresponding figure for non-M/WBEs is 22.5%. Table 4-23 presents data on the firm concentration in NAICS 236220. Here, only one Asian-owned firm received a contract and therefore received all of the dollars awarded to Asian firms. There was a slightly larger dispersion among non-M/WBE firms, with three firms capturing all of the non-M/WBE dollars. Table 4-24 presents data on the firm concentration in NAICS 238220. Three firms received all Asian contract dollars; in contrast, 22 non-M/WBE firms received contracts and the top three received only 68.1% of all non-M/WBE dollars. Table 4-25 illustrates a pattern similar to Table 4-24: three Asian-owned firms received all of the Asian contract dollars, while 14 non-M/WBE firms received contracts.

**Table 4-22: Three NAICS Codes where Asian Firms Receive the Most Spending**

NAICS	NAICS Code Label	Weight	Share of Total Asian Dollars	Share of Total Non-M/WBE Dollars
236220	Commercial and Institutional Building Construction	8.75%	70.2%	3.7%
238220	Plumbing, Heating, and Air-Conditioning Contractors	13.04%	9.8%	15.3%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.83%	5.6%	3.5%

Source: CHA analysis of Travis County data

**Table 4-23: Comparison of Asian and Non-M/WBE Firm Concentration  
NAICS Code: 236220 Commercial and Institutional Building Construction**

NAICS	Asian	Non-M/WBE
Number of Contracts	1	5
Number of Firms	1	3
Share of #1	100.0%	71.7%
Share of #2	0.0%	28.1%
Share of #3	0.0%	0.2%
Share of Top 3	100.0%	100.0%

Source: CHA analysis of Travis County data

**Table 4-24: Comparison of Asian and Non-M/WBE Firm Concentration  
NAICS Code: 238220 Plumbing, Heating, and Air-Conditioning Contractors**

NAICS	Asian	Non-M/WBE
Number of Contracts	3	30
Number of Firms	3	22
Share of #1	78.1%	25.9%
Share of #2	20.9%	22.9%
Share of #3	1.0%	19.3%
Share of Top 3	100.0%	68.1%

Source: CHA analysis of Travis County data

**Table 4-25: Comparison of Asian and Non-M/WBE Firm Concentration**  
**NAICS Code: 238210 Electrical Contractors and Other Wiring Installation Contractors**

NAICS	Asian	Non-M/WBE
Number of Contracts	6	18
Number of Firms	3	14
Share of #1	42.2%	56.4%
Share of #2	29.3%	17.7%
Share of #3	28.5%	7.9%
Share of Top 3	100.0%	82.0%

*Source: CHA analysis of Travis County data*

Tables 4-26 through 4-29 contain data for White woman-owned firms. Table 4-26 presents the three NAICS codes where White woman-owned firms received the largest share of their contract dollars. Once again, the M/WBE group received much more of their dollars from their top three codes compared to non-M/WBEs: White woman-owned firms received 40.2% of their contract dollars in these codes compared to non-M/WBEs, who received 6.9% in these three codes. Table 4-27 presents data on the firm concentration in NAICS 484220. Here, one firm received 96.2% of all White woman contract dollars; in contrast, the top non-M/WBE firm received only 28.8% of all non-M/WBE dollars. Table 4-28 presents data on the firm concentration in NAICS 541330. The top three White woman-owned firms received 66.5% of all White woman contract dollars; in contrast, the top non-M/WBE firm received 43.5% of all non-M/WBE dollars. Table 4-29 presents data on the firm concentration in NAICS 236220. In this NAICS code, the number of contracts and number of firms for White woman-owned firms and non-M/WBE firms was roughly identical.

**Table 4-26: Three NAICS Codes where White Woman Firms Receive the Most Spending**

NAICS	NAICS Code Label	Weight	Share of Total White Woman Dollars	Share of Total Non-M/WBE Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	2.63%	16.5%	0.2%
541330	Engineering Services	4.71%	14.8%	2.9%
236220	Commercial and Institutional Building Construction	8.75%	8.9%	3.7%

*Source: CHA analysis of Travis County data*

**Table 4-27: Comparison of White Woman and Non-M/WBE Firm Concentration  
NAICS Code: 484220 Specialized Freight (except Used Goods) Trucking, Local**

NAICS	White Woman	Non-M/WBE
Number of Contracts	8	30
Number of Firms	6	12
Share of #1	96.2%	28.8%
Share of #2	1.3%	20.3%
Share of #3	0.9%	15.2%
Share of Top 3	98.4%	64.3%

*Source: CHA analysis of Travis County data*

**Table 4-28: Comparison of White Woman and Non-M/WBE Firm Concentration  
NAICS Code: 541330 Engineering Services**

NAICS	White Woman	Non-M/WBE
Number of Contracts	36	25
Number of Firms	13	21
Share of #1	25.2%	18.3%
Share of #2	24.1%	13.9%
Share of #3	17.2%	11.3%
Share of Top 3	66.5%	43.5%

*Source: CHA analysis of Travis County data*

**Table 4-29: Comparison of White Woman and Non-M/WBE Firm Concentration  
NAICS Code: 236220 Commercial and Institutional Building Construction**

NAICS	White Woman	Non-M/WBE
Number of Contracts	5	5
Number of Firms	3	4
Share of #1	50.7%	71.7%
Share of #2	48.1%	28.1%
Share of #3	1.3%	0.2%
Share of Top 3	100.0%	100.0%

*Source: CHA analysis of Travis County data*

The data presented in Tables 4-14 through 4 -29 support the idea that regardless of any statistical disparities between contract utilization and weighted



availability, the contract dollars received by M/WBEs and the NAICS codes where M/WBEs received most of their Travis County dollars are more concentrated among a few firms compared to non-M/WBEs in those codes. These results suggest that while a few M/WBEs in a few subindustries have been able to enjoy equal opportunities, access to County contract and subcontracts is still not available to all firms regardless of the race or gender of ownership.

## C. Disparity Analysis of M/WBEs for Travis County's Contracts

As required by strict scrutiny, we next calculated disparity ratios for each demographic group, comparing the group's total utilization compared to its total weighted availability.

A *disparity ratio* is the relationship between the utilization and weighted availability (as determined in the section above). Mathematically, this is represented by:

$$DR = U/WA$$

Where DR is the disparity ratio; U is utilization rate; and WA is the weighted availability.

The courts have held that disparity results must be analyzed to determine whether the results are "significant". There are two distinct methods to measure a result's significance. First, a "large" or "substantively significant" disparity is commonly defined by courts as utilization that is equal to or less than 80% of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.<sup>185</sup> Second, statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the

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185. See U.S. Equal Employment Opportunity Commission regulation, 29 C.F.R. §1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

smaller the probability that it resulted from random chance alone.<sup>186</sup> A more in-depth discussion of statistical significance is provided in Appendix C.

### Substantive and Statistical Significance

- ‡ Connotes these values are substantively significant. Courts have ruled the disparity ratio less or equal to 80 percent represent disparities that are substantively significant. (See Footnote 185 for more information.)
- \* Connotes these values are statistically significant at the 0.05 level. (See Appendix C for more information.)
- \*\* Connotes these values are statistically significant at the 0.01 level. (See Appendix C for more information.)
- \*\*\* Connotes these values are statistically significant at the 0.001 level. (See Appendix C for more information.)

Table 4-30 presents the disparity ratios for each demographic group. The disparity ratios for three groups – Blacks, Hispanics, and MBEs – are substantively significant. The disparity ratio for White women is statistically significant at the 0.01 level.

**Table 4-30: Disparity Ratios by Demographic Group**

	Black	Hispanic	Asian	Native American	MBE	White Woman	M/WBE	Non-M/WBE
Disparity Ratio	74.6%‡	50.1%‡	96.4%	101.8%	74.8%‡	174.7%**	105.7%	98.4%

Source: CHA analysis of Travis County data

\*\* Indicates statistical significance at the 0.01 level

‡ Indicates substantive significance

It is the standard CHA practice to explore all M/WBE disparity ratios that exceeds 100%. This is to ensure that an abnormal pattern of M/WBE concentration does not account for disparity ratios greater than 100%, thereby leading to the unwarranted conclusion that race-conscious remedies are no longer needed to redress discrimination against a particular socially disadvantaged group. It is possible that a group's disparity ratio that is larger than 100% might be the result of the success of a few firms and not indicative of the experiences of the broad set of firms in that group. This exploration entails further examination of any NAICS codes where the NAICS codes share of overall spending is relatively high and utilization of an M/WBE subgroup in that code is relatively high.

186. A chi-square test – examining if the utilization rate was different from the weighted availability - was used to determine the statistical significance of the disparity ratio.

Given these criteria, we examined more closely the utilization of White woman-owned firms in Commercial and Institutional Building Construction (236220) and Engineering Services (541330). These codes were chosen because of the four NAICS codes that capture 56% of all County spending (see Table 4-4), only in these codes did White woman-owned firms receive significant contract dollars.

**Table 4-31: Targeted NAICS Codes for Further Exploration**

NAICS	NAICS Code Description	Weight	White Woman Utilization
236220	Commercial and Institutional Building Construction	8.8%	11.8%
541330	Engineering Services	4.7%	36.4%

*Source: CHA analysis of Travis County data*

In Tables 4-32 and 4-33, we explore the levels of firm concentration by examining several factors:

- The NAICS code's share of all Travis County spending with White woman firms compared to the NAICS code's share of Travis County spending received by non-M/WBEs. This provides a sense of how important spending in the NAICS code was to the overall revenue received by White woman firms compared to that same metric for non-M/WBEs. In a world where race and gender did not affect outcomes, the share would be similar.
- The number of White woman firms that received contracts compared to the number of non-M/WBE firms that received contracts, and how the monies received were distributed among these firms. These two metrics provide a sense of whether there were fewer M/WBE firms receiving contracts compared to non-M/WBE firms and how concentrated the M/WBE contract dollars were compared to the level of concentration among non-M/WBE firms. If either was the case, then the high level of utilization by a M/WBE group resulted from the success of a few M/WBEs and was not distributed across the entire spectrum of M/WBE firms. This would be in contrast to a wider distribution of success among non-M/WBE firms.

We examined the issue of firm concentration using four metrics: 1) the share of contract dollars received by the largest firm in the group; 2) the share of contract dollars received by the second largest firm in the group; 3) the share of contract dollars received by the third largest firm in the group; and 4) the combined share of contract dollars received by the top three largest firms in the group. These metrics provide a yardstick with which the M/WBE concentration can be compared to the non-M/WBE concentration. If the M/WBE concentration exceeds the non-M/WBE concentration, this reflects that a small number of M/WBE firms are benefiting from Travis County's HUB program.

Table 4-32 presents these data for White woman firms and non-M/WBE firms in NAICS Code 236220 - Commercial and Institutional Building Construction. This code contains twice the share of all dollars received by White woman firms compared to the code's share of all non-M/WBE dollars. Few firms in either group received contracts, so the share of dollars going to each group's top three firms is identical.

**Table 4-32: Comparing White Woman and Non-M/WBE Outcomes**  
**NAICS Code 236220 Commercial and Institutional Building Construction**  
**(NAICS Code Weight of All Travis County Spending: 8.8%)**

	White Woman	Non-M/WBE
NAICS code share of all spending	8.9%	3.7%
Number of firms	3	4
Share of group spending in NAICS code by the largest firm	50.7%	71.7%
Share of group spending in NAICS code by the second largest firm	48.1%	28.1%
Share of group spending in NAICS code by the third largest firm	1.3%	0.2%
Share of group spending in NAICS code by the three largest firms	100.0%	99.98%
Share of group spending in NAICS code by the remaining firms	0.0%	0.02%

*Source: CHA analysis of Travis County data*

Table 4-33 presents these data for White woman firms and non-M/WBE firms in NAICS Code 541330 – Engineering Services. We find that this code contains a much larger share of all dollars received by White woman firms compared to the code's share of all non-M/WBE dollars. The concentration of contract dollars among the top three White woman firms is larger than the share received by the largest non-M/WBE firms.

**Table 4-33: Comparing White Woman and Non-M/WBE Outcomes**  
**NAICS Code 541330 Engineering Services**  
**(NAICS Code Weight of All Travis County Spending: 4.7%)**

	White Woman	Non-M/WBE
NAICS code share of all spending	14.8%	2.9%
Number of firms	13	21
Share of group spending in NAICS code by the largest firm	25.2%	18.3%
Share of group spending in NAICS code by the second largest firm	24.1%	13.9%

	White Woman	Non-M/WBE
Share of group spending in NAICS code by the third largest firm	17.2%	11.3%
Share of group spending in NAICS code by the three largest firms	66.5%	43.5%
Share of group spending in NAICS code by the remaining firms	33.5%	56.5%

*Source: CHA analysis of Travis County data*

The level of concentration in NAICS code 541330 provides potential evidence that the overall high disparity ratio for White woman firms can be attributed to the activity in this code.

## D. Conclusion

This chapter presented the results of the CHA analysis of Travis County contract data and customized availability database compiled from a variety of sources. We analyzed this data to understand patterns in firm concentration and disparity ratios. We find the data as a whole support the conclusion that M/WBE firms fewer disparate contracting opportunities compared to non-M/WBE firms.



# V. ANALYSIS OF DISPARITIES IN THE TRAVIS COUNTY AREA ECONOMY

## A. Introduction

The late Nobel Prize Laureate Kenneth Arrow, in his seminal paper on the economic analysis of discrimination, observed:

Racial discrimination pervades every aspect of a society in which it is found. It is found above all in attitudes of both races, but also in social relations, in intermarriage, in residential location, and frequently in legal barriers. It is also found in levels of economic accomplishment; this is income, wages, prices paid, and credit extended.<sup>187</sup>

This Chapter explores the data and literature relevant to how discrimination in the Travis County area economy affects the ability of minorities and women to fairly and fully engage in Travis County (“County”) contract opportunities. First, we analyze the rates at which Minority- and Woman-Owned Business Enterprises (“M/WBEs”) in the Travis County area economy form firms and their earnings from those firms. Next, we summarize the literature on barriers to equal access to commercial credit. Finally, we summarize the literature on barriers to equal access to human capital. All three types of evidence have been found by the courts to be relevant and probative of whether a government will be a passive participant in discrimination without some type of affirmative intervention.

A key element to determine the need for the County to intervene in its market through contract goals is an analysis of the extent of disparities independent of the agency’s intervention through its contracting affirmative action program.

The courts have repeatedly held that analysis of disparities in the rate of M/WBE formation in the government’s markets as compared to similar non-M/WBEs, disparities in M/WBE earnings, and barriers to access to capital markets are highly relevant to a determination of whether market outcomes are affected by race or gender ownership status.<sup>188</sup> Similar analyses supported the successful legal

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187. Arrow, Kenneth J., “What Has Economics to say about racial discrimination?” *Journal of Economic Perspectives*, 12, 2, (1998), 91-100.

188. See the discussion in Chapter II of the legal standards applicable to contracting affirmative action programs.

defense of the Illinois Tollway's Disadvantaged Business Enterprise (DBE) Program from constitutional challenge.<sup>189</sup>

Similarly, the Tenth Circuit Court of Appeals also upheld the U.S. Department of Transportation's DBE program, and in doing so, stated that this type of evidence

demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs... The government's evidence is particularly striking in the area of the race-based denial of access to capital, without which the formation of minority subcontracting enterprises is stymied.<sup>190</sup>

Business discrimination studies and lending studies are relevant and probative because they show a strong link between the disbursement of public funds and the channeling of those funds due to private discrimination. In unanimously upholding the USDOT DBE Program, the courts agree that disparities between the earnings of minority-owned firms and similarly situated non-minority-owned firms and the disparities in commercial loan denial rates between Black business owners compared to similarly situated non-minority business owners are strong evidence of the continuing effects of discrimination.<sup>191</sup> "Evidence that private discrimination results in barriers to business formation is relevant because it demonstrates

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189. *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 840 F.3d 942 (7<sup>th</sup> Cir. 2016) (upholding the Illinois Tollway's program for state funded contracts modeled after Part 26 and based on CHA's expert testimony, including about disparities in the overall Illinois construction industry); *Midwest Fence Corp. v. Illinois Department of Transportation, Illinois State Toll Highway Authority et al*, 2015 WL 1396376 at \* 21 (N.D. Ill.) ("Colette Holt [& Associates'] updated census analysis controlled for variables such as education, age, and occupation and still found lower earnings and rates of business formation among women and minorities as compared to white men."); *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) (holding that City of Chicago's M/WBE program for local construction contracts satisfied "compelling interest" standards using this framework).

190. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1169 (10<sup>th</sup> Cir. 2000), *cert. granted then dismissed as improvidently granted*, 532 U.S. 941 (2001).

191. *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868, at \*64 (Sept. 8, 2005).



that M/WBEs are precluded *at the outset* from competing for public construction contracts. Evidence of barriers to fair competition is also relevant because it again demonstrates that *existing* M/WBEs are precluded from competing for public contracts.”<sup>192</sup>

This type of court-approved analysis is especially important for an agency such as the County, which has been implementing a program for many years. The agency’s remedial market interventions through the use of race- and gender-based contract goals may ameliorate the disparate impacts of marketplace discrimination in the agency’s own contracting activities. Put another way, the program’s success in moving towards parity for minority and woman firms may be “masking” the effects of discrimination that, but for the contract goals, would mirror the disparities in M/WBE utilization in the overall economy.

To explore the question whether firms owned by non-Whites and White women face disparate treatment in the County marketplace outside of the County contracts, we examined the U.S. Bureau of the Census’ *American Community Survey* (“ACS”) which allows us to analyze disparities using individual entrepreneurs as the basic unit of analysis.<sup>193</sup> We used the Austin-metropolitan area as the geographic unit of analysis.

We found disparities in wages, business earnings and business formation rates for minorities and women in all industry sectors in the County’s marketplace.<sup>194</sup>

## **B. Disparate Treatment in the Travis County Marketplace: Evidence from the Census Bureau’s 2015 - 2019 American Community Survey**

As discussed in the beginning of this Chapter, the key question is whether firms owned by non-Whites and White women face disparate treatment in the marketplace without the intervention of the County’s Historically Underutilized Business Program. In this section, we use the Census Bureau’s ACS data to explore this and other aspects of this question. One element asks if demographic differences exist in the wage and salary income received by private sector workers. Beyond the issue of bias in the incomes generated in the private sector, this exploration is

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192. *Id.*

193. Data from 2015 - 2019 American Community Survey are the most recent for a five-year period.

194. Possible disparities in wages are important to explore because of the relationship between wages and business formation. Research by Alicia Robb and others indicate non-White firms rely on their own financing to start businesses compared to White firms who rely more heavily on financing provided by financial institutions. To the extent non-Whites face discrimination in the labor market, they would have reduced capacity to self-finance their entrepreneurial efforts and, hence, impact business formation. *See, for example*, Robb’s “Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms” (2013), [https://www.sba.gov/sites/default/files/files/rs403tot\(2\).pdf](https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf).

important for the issue of possible variations in the rate of business formation by different demographic groups. One of the determinants of business formation is the pool of financial capital at the disposal of the prospective entrepreneur. The size of this pool is related to the income level of the individual either because the income level impacts the amount of personal savings that can be used for start-up capital, or the income level affects one's ability to borrow funds. Consequently, if particular demographic groups receive lower wages and salaries then they would have access to a smaller pool of financial capital, and thus reduce the likelihood of business formation.

The *American Community Survey Public Use Microdata Sample* ("PUMS") is useful in addressing these issues. The ACS is an annual survey of one percent of the population and the PUMS provides detailed information at the individual level. In order to obtain robust results from our analysis, we used the file that combines the most recent data available for years 2015 through 2019.<sup>195</sup> With this rich data set, our analysis can establish with greater certainty any causal links between race, gender and economic outcomes.

The Census Bureau classifies Whites, Blacks, Native Americans, and Asians as racial groupings. CHA developed a fifth grouping, "Other", to capture individuals who are not a member of the above four racial categories. In addition, Hispanics are an ethnic category whose members could be of any race, *e.g.*, Hispanics could be White or Black. In order to avoid double counting – *i.e.*, an individual could be counted once as Hispanic and once as White – CHA developed non-Hispanic subset racial categories: non-Hispanic Whites; non-Hispanic Blacks; non-Hispanic Native Americans; non-Hispanic Asians; and non-Hispanic Others. When those five groups are added to the Hispanic group, the entire population is counted and there is no double-counting. (When Whites are disaggregated into White men and White women, those groupings are non-Hispanic White men and non-Hispanic White women). For ease of exposition, the groups in this report are referred to as Black, Native American, Asian, Other, White women, and White men, while the actual content is the non-Hispanic subset of these racial groups.

Often, the general public sees clear associations between race, gender, and economic outcomes and assumes this association reflects a tight causal connection. However, economic outcomes are determined by a broad set of factors including, and extending beyond, race and gender. To provide a simple example, two people who differ by race or gender may receive different wages. This difference may simply reflect that the individuals work in different industries. If this underlying difference is not known, one might assert the wage differential is the result of race or gender difference. To better understand the impact of race or gender on wages, it

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195. Initially, the Census Bureau contacted approximately 3.5M households. For the analysis reported in this Chapter, we examined over 47,000 observations. For more information about the ACS PUMS, see <https://www.census.gov/programs-surveys/acs/>.

is important to compare individuals of different races or genders who work in the same industry. Of course, wages are determined by a broad set of factors beyond race, gender, and industry. With the ACS PUMS, we have the ability to include a wide range of additional variables such as age, education, occupation, and state of residence in the analysis.

We employ a multiple regression statistical technique to process this data. This methodology allows us to perform two analyses: an estimation of how variations in certain characteristics (called independent variables) will impact the level of some particular outcome (called a dependent variable), and a determination of how confident we are that the estimated variation is statistically different from zero. We have provided a more detailed explanation of this technique in Appendix A.

With respect to the first result of regression analysis, we examine how variations in the race, gender, and industry of individuals impact the wages and other economic outcomes received by individuals. The technique allows us to determine the effect of changes in one variable, assuming that the other determining variables are the same. That is, we compare individuals of different races, but of the same gender and in the same industry; or we compare individuals of different genders, but of the same race and the same industry; or we compare individuals in different industries, but of the same race and gender. We determine the impact of changes in one variable (*e.g.*, race, gender or industry) on another variable (wages), “controlling for” the movement of any other independent variables.

With respect to the second result of regression analysis, we determine the statistical significance of the relationship between the dependent variable and independent variable. For example, the relationship between gender and wages might exist (*e.g.*, holding all other factors constant, women earn less than men), but we find that it is not statistically different from zero. In this case, we are not confident that there is not any relationship between the two variables. If the relationship is not statistically different from zero, then a variation in the independent variable has no impact on the dependent variable. The regression analysis allows us to say with varying degrees of statistical confidence that a relationship is different from zero. If the estimated relationship is statistically significant at the 0.05 level, that indicates that we are 95% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.01 level, that indicates that we are 99% confident that the relationship is different from zero; if the estimated relationship is statistically significant at the 0.001 level, that indicates that we are 99.9% confident that the relationship is different from zero.<sup>196</sup>

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196. Most social scientists do not endorse utilizing a confidence level of less than 95%. Appendix C explains more about statistical significance.

In the following presentation of results, each sub-section first reports data on the share of a demographic group that forms a business (business formation rates); the probabilities that a demographic group will form a business relative to White men (business formation probabilities); the differences in wages received by a demographic group relative to White men (wage differentials); and the differences in business earnings received by a demographic group relative to White men (business earnings differentials). Because the ACS contained limited observations for certain groups in particular industries, we were unable to provide reliable estimates for business outcomes for these groups. However, there were always sufficient observations in the sample of wage earners in each group in each industry to permit us to develop reliable estimates.

## **1. All Industries Combined in the Austin Metropolitan Area**

One method of exploring differences in economic outcomes is to examine the rate at which different demographic groups form businesses. We developed these business formation rates using data from the U.S. Bureau of the Census' ACS. Table 5-1 presents these results.

The business formation rate represents the share of a population that forms businesses. When developing industry-specific rates, we examine the population that works in that particular industry and identify what share of that sub-population that form businesses. For example, Table 5-1 indicates that 2.7% of Blacks forms businesses; this is less than the 6.7% business formation rate for White men. The Table indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-2 utilizes probit regression analysis to examine the probability of forming a business after controlling for important factors beyond race and gender.<sup>197</sup> This Table indicates that non-Whites and White women are less likely to form businesses compared to White men; the reduced probability ranges from 0.6% for Others to 4.7% for Native Americans. These results were statistically significant at the 0.01 level for Blacks, Hispanics, and White women.

With respect to the interpretation of the level of statistical significance of a result, as indicated in the latter part of the previous section, we are exploring whether the result of the regression analysis is statistically different from zero; if the finding is statistically significant, we also indicate the level of statistical confidence at which the result is accurate. Table 5-2 indicates that the probability that Blacks form businesses is 3.9% less than the probability that White men form business, once we control for age, education, and occupation that determine business formation. The statistical significance of this result is at the 0.01 level, which means we are 95% statistically confident the result is true. If a

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197. Appendix B provides a "Further Explanation of Probit Regression Analysis."

result is non-zero but the result is not statistically significant, then we cannot rule out zero being the true result. (Note: this does not mean the result is wrong, only there is not a statistically significant level of confidence in the result.) Table 5-2 indicates that the probability that Native Americans form businesses is 4.7% less than White men.

Another way to measure equity is to examine how the wage and salary incomes and business earnings of particular demographic groups compare to White men. Multiple regression statistical techniques allowed us to examine the impact of race and gender on economic outcomes while controlling for other factors, such as education and age.<sup>198</sup> Tables 5.3 and 5.4 present this data on wage and salary incomes and business earnings respectively. Table 5-3 indicates that non-Whites and White women earn less than White men. The reduction in earnings ranges from 19.3% to 46.8% and all of the results are statistically significant at the 0.001 level (except the coefficient for Native Americans which is statistically significant at the 0.05 level). Table 5-4 indicates that Blacks, Others, and White women receive business earnings less than White men. The reduction in earnings ranges from 186.0% to 58.9%. These results were statistically significant.

**Table 5-1: Business Formation Rates**  
**All Industries, 2015 - 2019<sup>199</sup>**

Demographic Group	Business Formation Rates
Black	2.7%
Hispanic	2.7%
Native American	1.8%
Asian/Pacific Islander	3.8%
Other	5.1%
White Women	4.6%
Non-White Male	3.5%
White Male	6.7%

*Source: CHA calculations from the American Community Survey*

198. See Appendix A for more information on multiple regression statistical analysis.

199. Statistical significance tests were not conducted on basic business formation rates.

**Table 5-2: Business Formation Probabilities Relative to White Males**  
**All Industries, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-3.9%**
Hispanic	-2.7%**
Native American	-4.7%
Asian/Pacific Islander	-1.5%
Other	-0.6%
White Women	-1.7%**

Source: CHA calculations from the American Community Survey

\*\* Indicates statistical significance at the 0.01 level

**Table 5-3: Wage Differentials for Selected Groups Relative to White Men**  
**All Industries, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-32.6%***
Hispanic	-19.3%***
Native American	-24.8%*
Asian/Pacific Islander	-27.5%***
Other	-46.8%***
White Women	-30.2%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\* Indicates statistical significance at the 0.05 level

**Table 5-4: Business Earnings Differentials for Selected Groups Relative to White Men**  
**All Industries**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-92.6%**
Hispanic	1.3%
Native American	105.0%
Asian/Pacific Islander	40.4%
Other	-186.0% <sup>a</sup>
White Women	-58.9%***

a. The proper way to interpret a coefficient that is less than negative 100% (e.g., the value of the coefficient for Other in Table 5-4), is the percentage amount non-M/WBEs earn that is more than the group in question. In this case, non-M/WBEs earn 186% more than Others.

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

\* Indicates statistical significance at the 0.05 level

## 2. The Construction Industry in the Austin Metropolitan Area

There were low numbers of Native American (1) and Other firms (0) in the sample of the construction industry; consequently, reliable estimates of firm outcomes could not be made for these groups. Table 5-5 indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-6 indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The reduced probabilities of business formation ranged from 15.9% to 0.8%. None of these coefficients were statistically significant. Table 5-7 indicates that non-Whites and White women earn less than White men. The statistically significant reductions in earnings range from 53.5% to 13.2%. Four of these coefficients were statistically significant. Table 5-8 indicates that none of the business coefficients were statistically significant.

**Table 5-5: Business Formation Rates  
Construction, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	1.1%
Hispanic	4.9%
Native American	---
Asian/Pacific Islander	4.2%
Other	---
White Women	10.2%
Non-White Male	5.1%
White Male	14.3%

*Source: CHA calculations from the American Community Survey*

**Table 5-6: Business Formation Probability Differentials for Selected Groups  
Relative to White Men, Construction, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-15.9%
Hispanic	-4.0%
Native American	---
Asian/Pacific Islander	-4.3%
Other	---
White Women	-0.8%

*Source: CHA calculations from the American Community Survey*

**Table 5-7: Wage Differentials for Selected Groups Relative to White Men  
Construction, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-48.4%***
Hispanic	-15.4%***
Native American	-13.2%



Demographic Group	Wages Relative to White Men (% Change)
Asian/Pacific Islander	-53.5%**
Other	-42.6%
White Women	-25.4%**

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

**Table 5-8: Business Earnings Differentials for Selected Groups Relative to White Men**

**Construction, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	37.3%
Hispanic	18.2%
Native American	---
Asian/Pacific Islander	-140.0%
Other	---
White Women	-88.6%

Source: CHA calculations from the American Community Survey

### 3. The Construction-Related Services Industry in the Austin Metropolitan Area

The sample of firms in the construction-related services industry contained too few numbers of Black, Hispanic, Native American, Asian, White women, and Other firms to produce reliable estimates for these groups. The wages for White women were 18.6% less than those of White men and this result was statistically significant at the 0.01 level.

**Table 5-9: Business Formation Rates**  
**Construction-Related Services, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	---
Hispanic	---
Native American	---

Demographic Group	Business Formation Rates
Asian/Pacific Islander	---
Other	---
White Women	---
Non-White Male	---
White Male	7.0%

Source: CHA calculations from the American Community Survey

**Table 5-10: Business Formation Probability Differentials for Selected Groups Relative to White Men, Construction-related Services, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	---

Source: CHA calculations from the American Community Survey

**Table 5-11: Wage Differentials for Selected Groups Relative to White Men Construction-Related Services, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	5.0%
Hispanic	-13.9%
Native American	---
Asian/Pacific Islander	-5.7%
Other	-23.3%
White Women	-18.6%**

Source: CHA calculations from the American Community Survey

\*\* Indicates statistical significance at the 0.01 level

**Table 5-12: Business Earnings Differentials for Selected Groups Relative to White Men**  
**Construction-related Services, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	---

*Source: CHA calculations from the American Community Survey*

#### 4. The Goods Industry in Austin Metropolitan Area

There were low numbers of Black (4), Hispanic (13), Native American (0), Asian (9), and Other firms (0) in the sample of the goods industry. Therefore, once again, reliable estimates of firm outcomes could not be made for these groups. Table 5-13 indicates that White women have higher business formation rates compared to White men. While Table 5-14 indicates that White women form businesses at a higher rate than White men, the result is statistically insignificant. Table 5-15 indicates that statistically significant results are found for five groups (Black; Hispanic; Asian/Pacific Islanders; Others; and White women) and all indicate lower wages relative to White men. Table 5-16 indicates that the coefficients for White women business earnings were not statistically significant.

**Table 5-13: Business Formation Rates**  
**Goods, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---

Demographic Group	Business Formation Rates
White Women	5.8%
Non-White Male	---
White Male	3.7%

Source: CHA calculations from the American Community Survey

**Table 5-14: Business Formation Probabilities Relative to White Males  
Goods, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	0.8%

Source: CHA calculations from the American Community Survey

**Table 5-15: Wage Differentials for Selected Groups Relative to White Men  
Goods, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-39.0%***
Hispanic	-16.5%**
Native American	-42.2%
Asian/Pacific Islander	-44.4%***
Other	-113.0%**
White Women	-51.9%***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

**Table 5-16: Business Earnings Differentials for Selected Groups Relative to White Men**  
**Goods, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	---
Other	---
White Women	60.5%

*Source: CHA calculations from the American Community Survey*

## 5. The Services Industry in Austin Metropolitan Area

There were low numbers of Native American (1) and Other firms (8) in the sample of the services industry; consequently, reliable estimates of firm outcomes could not be made for these groups. Table 5-17 indicates that White men have higher business formation rates compared to non-Whites and White women. Table 5-18 indicates that non-Whites and White women are less likely to form businesses compared to similarly situated White men and the coefficients are statistically significant at the 0.01 level. Table 5-19 indicates that non-Whites and White women earn less than White men – ranging from 19.5% to 34.2% – and these coefficients were statistically significant. Table 5-20 indicates that Black and White woman firms earned less than White male firms and these results were statistically significant.

**Table 5-17: Business Formation Rates**  
**Services, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	3.3%
Hispanic	2.9%
Native American	---
Asian/Pacific Islander	4.1%
Other	---

Demographic Group	Business Formation Rates
White Women	5.8%
Non-White Male	4.3%
White Male	8.1%

Source: CHA calculations from the American Community Survey

**Table 5-18: Business Formation Probability Differentials for Selected Groups  
Relative to White Men, Services, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	-3.3% <sup>**</sup>
Hispanic	-2.6% <sup>**</sup>
Native American	---
Asian/Pacific Islander	-2.5% <sup>**</sup>
Other	---
White Women	-1.6% <sup>**</sup>

Source: CHA calculations from the American Community Survey

<sup>\*\*</sup> Indicates statistical significance at the 0.01 level

**Table 5-19: Wage Differentials for Selected Groups Relative to White Men  
Services, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-31.4% <sup>***</sup>
Hispanic	-19.5% <sup>***</sup>
Native American	-23.0%
Asian/Pacific Islander	-28.7% <sup>***</sup>
Other	-34.2% <sup>**</sup>
White Women	-26.3% <sup>***</sup>

Source: CHA calculations from the American Community Survey

<sup>\*\*\*</sup> Indicates statistical significance at the 0.001 level

<sup>\*\*</sup> Indicates statistical significance at the 0.01 level

**Table 5-20: Business Earnings Differentials for Selected Groups Relative to White Men  
Services, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	-129.0% **
Hispanic	-26.8%
Native American	---
Asian/Pacific Islander	21.9%
Other	---
White Women	-60.4% ***

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level

## 6. The Information Technology Industry in the Austin Metropolitan Area

There were low numbers of Blacks (2), Hispanics (10), Native American (0), and Other (1) sampled in the information technology industry. Therefore, reliable estimates of firm outcomes could not be made in this sector. Table 5-21 indicates that White men have higher business formation rates compared to Asians but lower compared to White women. Table 5-22 indicates that none of the coefficients were statistically significant. Table 5-23 indicates that non-Whites and White women earn less than White men and the coefficients for Blacks, Hispanics, Asians, and White women were statistically significant. Table 5-24 indicates that two business coefficients (Asian/Pacific Islanders; White women) were not statistically significant.

**Table 5-21: Business Formation Rates  
Information Technology, 2015 - 2019**

Demographic Group	Business Formation Rates
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	3.0%
Other	---

Demographic Group	Business Formation Rates
White Women	4.6%
Non-White Male	---
White Male	4.1%

Source: CHA calculations from the American Community Survey

**Table 5-22: Business Formation Probability Differentials for Selected Groups Relative to White Men, Information Technology, 2015 - 2019**

Demographic Group	Probability of Forming a Business Relative to White Men
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	-1.8%
Other	---
White Women	-0.3%

Source: CHA calculations from the American Community Survey

**Table 5-23: Wage Differentials for Selected Groups Relative to White Men Information Technology, 2015 - 2019**

Demographic Group	Wages Relative to White Men (% Change)
Black	-20.4% <sup>**</sup>
Hispanic	-30.9% <sup>***</sup>
Native American	-9.0%
Asian/Pacific Islander	-16.3% <sup>***</sup>
Other	-17.0%
White Women	-21.1% <sup>***</sup>

Source: CHA calculations from the American Community Survey

\*\*\* Indicates statistical significance at the 0.001 level

\*\* Indicates statistical significance at the 0.01 level



**Table 5-24: Business Earnings Differentials for Selected Groups Relative to White Men****Information Technology, 2015 - 2019**

Demographic Group	Earnings Relative to White Men (% Change)
Black	---
Hispanic	---
Native American	---
Asian/Pacific Islander	-10.7%
Other	---
White Women	-63.0%

*Source: CHA calculations from the American Community Survey*

## 7. Conclusion

Overall, the data presented in the above tables indicate that non-Whites and White women form businesses less than White men and their wage and business earnings are less than those of White men. These analyses support the conclusion that barriers to business success do affect non-Whites and White women.

## C. Disparate Treatment in the Travis County Area Marketplace: Evidence from the Census Bureau's 2017 Annual Business Survey

We further examined whether non-Whites and White women have disparate outcomes when they are active in the Travis County area marketplace. This question is operationalized by exploring to see if the share of business receipts, number of firms, and payroll for firms owned by non-Whites and White women is greater than, less than, or equal to the share of all firms owned by non-Whites and White women.

To answer this question, we examined the U.S. Bureau's Annual Business Survey ("ABS"). The ABS supersedes the more well-known Survey of Business Owners ("SBO"). The SBO was last conducted in 2012 and historically has been reported every five years. In contrast, the ABS was first conducted in 2017 and it is the Census Bureau's goal to release results annually. As of the writing of this report, the most recent complete ABS contains 2017 data. The ABS surveyed about 850,000 employer firms and collected data on a variety of variables documenting owner-

ship characteristics including race, ethnicity, and gender. It also collected data on the firms' business activity with variables marking the firms' number of employees, payroll size, sales and industry.<sup>200</sup>

With these data, we grouped the firms into the following ownership categories:<sup>201,202</sup>

- Hispanics
- non-Hispanic Blacks
- non-Hispanic Native Americans
- non-Hispanic Asians
- non-Hispanic White women
- non-Hispanic White men
- Firms equally owned by non-Whites and Whites
- Firms equally owned by men and women
- Firms that were either publicly-owned or where the ownership could not be classified

For purposes of this analysis, the first four groups were aggregated to form a non-White category. Since our interest is the treatment of non-White-owned firms and White woman-owned firms, the last four groups were aggregated to form one category. To ensure this aggregated group is described accurately, we label this group "not non-White/non-White women". While this label is cumbersome, it is important to be clear this group includes firms whose ownership extends beyond White men, such as firms that are not classifiable or that are publicly traded and thus have no racial ownership. In addition to the ownership demographic data, the Survey also gathers information on the sales, number of paid employees, and payroll for each reporting firm.

We analyzed the ABS data on the following sectors:

- Construction
- Professional, Scientific and Technical Services
- Goods
- Other services

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200. For more information on the Annual Business Survey see <https://www.census.gov/programs-surveys/abs/about.html>.

201. Race and gender labels reflect the categories used by the Census Bureau.

202. For expository purposes, the adjective "non-Hispanic" will not be used in this Chapter; the reader should assume that any racial group referenced does not include members of that group who identify ethnically as Hispanic.

However, the nature of the ABS data – a sample of all businesses, not the entire universe of all businesses – required some adjustments. In particular, we had to define the sectors at the 2-digit North American Industry Classification System (“NAICS”) code level, and therefore our sector definitions do not exactly correspond to the definitions used to analyze the County contract data in Chapter IV, where we are able to determine sectors at the 6-digit NAICS code level. At a more detailed level, the number of firms sampled in particular demographic and sector cells may be so small that the Census Bureau does not report the information, either to avoid disclosing data on businesses that can be identified or because the small sample size generates unreliable estimates of the universe. We therefore report 2-digit data.

Table 5-25 presents information on which NAICS codes were used to define each sector.

**Table 5-25: 2-Digit NAICS Code Definition of Sector**

ABS Sector Label	2-Digit NAICS Codes
Construction	23
Professional, Scientific, and Technical Services <sup>a</sup>	54
Goods	31,42, 44
Other Services	48, 52, 53, 56, 61, 62, 71, 72, 81

*a. This sector includes (but is broader than just) construction-related services. It is impossible to narrow this category to construction-related services without losing the capacity to conduct race and gender specific analyses.*

The balance of this Chapter section reports the findings of the ABS analysis.

## 1. All Industries

For a baseline analysis, we examined all industries in the State of Texas. The state was the geographic unit of analysis because the ABS does not present data at the sub-state level. Table 5-26 presents data on the percentage share that each group has of the total of each of the following four business outcomes:

- The number of firms with employees (employer firms)
- The sales and receipts of all employer firms
- The number of paid employees
- The annual payroll of employer firms

Panel A of Table 5-26 presents data for the four basic non-White racial groups:

- Black
- Hispanic
- Native American
- Asian

Panel B of Table 5-26 presents data for six types of firm ownership:

- Non-White
- White women
- Not non-White/non-White women<sup>203</sup>

Categories in the second panel are mutually exclusive. Hence, firms that are non-White and equally owned by men and women are classified as non-White and firms that are equally owned by non-Whites and Whites and equally owned by men and women are classified as equally owned by non-Whites and Whites.

Since the central issue is the possible disparate treatment of non-White firms and White woman firms, we calculate three disparity ratios each for Black, Hispanic, Asian, Native American, non-White, and White woman firm respectively (a total of 18 ratios), presented in Table 5-27:

- Ratio of sales and receipts share for all employer firms over the share of total number of all employer firms.
- Ratio of sales and receipts share for employer firms over the share of total number of employer firms.
- Ratio of annual payroll share over the share of total number of employer firms.

For example, the disparity ratio of sales and receipts share for all firms over the share of total number of all employer firms for Black firms is 13.0% (as shown in Table 5-26). This is derived by taking the Black share of sales and receipts for all employer firms (0.3%) and dividing it by the Black share of total number of all employer firms (2.2%) that are presented in Table 5-26.<sup>204</sup> If Black-owned firms earned a share of sales equal to their share of total firms, the disparity would have been 100%. An index less than 100% indicates that a given group is

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203. Again, while a cumbersome nomenclature, it is important to remain clear that this category includes firms other than those identified as owned by White men.

204. Please note that while the numbers presented in Table 5-26 are rounded to the first decimal place, the calculations resulting in the numbers presented in Table 5-27 are based on the actual (non-rounded) figures. Therefore, the Black ratio presented in Table 5-27 of 13.0% (as presented in Table 5-27) is not the same figure as that which would be derived when you divided 0.3 by 2.2 (the numbers presented in Table 5-26).

being utilized less than would be expected based on its availability, and courts have adopted the Equal Employment Opportunity Commission's "80% rule" that a ratio less than 80% presents a *prima facie* case of discrimination.<sup>205</sup> All of the 18 disparity ratios for non-White firms and White woman firms are below this threshold.<sup>206</sup>

**Table 5-26: Demographic Distribution of Sales and Payroll Data – Aggregated Groups**  
**All Industries, 2017**

	Number of Firms with Paid Employees (Employer Firms)	Sales & Receipts - All Firms with Paid Employees (Employer Firms) (\$1,000)	Number of Paid Employees	Annual payroll (\$1,000)
<b>Panel A: Distribution of Non-White Firms</b>				
Black	2.2%	0.3%	1.1%	0.6%
Hispanic	12.2%	2.2%	5.7%	3.4%
Asian	11.3%	2.1%	4.1%	2.4%
Native American	0.4%	0.1%	0.2%	0.1%
<b>Panel B: Distribution of All Firms</b>				
Non-White	26.1%	4.7%	11.1%	6.5%
White Women	13.6%	2.7%	5.8%	4.5%
Not Non-White/ Not White Women	60.3%	92.6%	83.1%	89.0%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CHA calculations from American Business Survey

205. 29 C.F.R. §1607.4(D) ("A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

206. Because the data in the subsequent tables are presented for descriptive purposes, significance tests on these results are not conducted.

**Table 5-27: Disparity Ratios of Firm Utilization Measures**  
**All Industries, 2017**

	Ratio of Sales to Number of Employer Firms	Ratio of Employees to Number of Employer Firms	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratio for Non-White Firms</b>			
Black	13.0%	50.5%	26.2%
Hispanic	18.0%	46.7%	27.5%
Asian	18.5%	36.6%	21.6%
Native American	22.1%	42.8%	30.0%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	17.8%	42.6%	24.9%
White Women	19.9%	42.9%	33.2%
Not Non-White/Not White Women	153.6%	137.7%	147.6%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

*Source: CHA calculations from American Business Survey*

This same approach was used to examine the Construction, Professional, Scientific and Technical Services, Goods, and Other Services sectors. The following are summaries of the results of the disparity analyses.

## 2. Construction

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-28, 17 fall under the 80% threshold.

**Table 5-28: Disparity Ratios – Aggregated Groups**  
**Construction, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	48.4%	58.0%	44.7%
Hispanic	44.3%	52.3%	39.9%
Asian	35.9%	33.9%	29.8%
Native American	50.5%	69.2%	59.3%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	44.1%	51.8%	40.0%
White Women	62.9%	84.0%	74.6%
Not Non-White/Not White Women	119.4%	114.9%	119.2%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CHA calculations from American Business Survey

### 3. Construction-Related Services

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-29, all 18 fall under the 80% threshold.

**Table 5-29: Disparity Ratios – Aggregated Groups**  
**Professional, Scientific, and Technical Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	33.0%	34.9%	25.5%
Hispanic	34.7%	44.2%	26.8%
Asian	43.3%	44.4%	39.1%
Native American	34.4%	33.3%	24.9%

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	38.5%	43.1%	32.3%
White Women	42.0%	44.1%	32.0%
Not Non-White/Not White Women	135.9%	133.8%	140.6%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CHA calculations from American Business Survey

#### 4. Goods

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-30, all 18 fall under the 80% threshold.

**Table 5-30: Disparity Ratios – Aggregated Groups  
Goods, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	13.5%	25.8%	20.9%
Hispanic	14.3%	29.8%	23.4%
Asian	12.7%	21.4%	14.3%
Native American	19.2%	42.7%	39.2%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	13.4%	24.9%	18.1%
White Women	13.8%	34.4%	30.8%
Not Non-White/Not White Women	158.7%	148.9%	152.8%
<b>All Firms</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: CHA calculations from American Business Survey



## 5. Services

Of the 18 disparity ratios for non-White firms and White woman firms presented in Table 5-31, all 18 fall under the 80% threshold.

**Table 5-31: Table 5-31 Disparity Ratios – Aggregated Groups  
Services, 2017**

	Ratio of Sales to Number of Firms (All Firms)	Ratio of Sales to Number of Firms (Employer Firms)	Ratio of Payroll to Number of Employer Firms
<b>Panel A: Disparity Ratios for Non-White Firms</b>			
Black	21.9%	59.3%	33.2%
Hispanic	24.6%	55.7%	34.5%
Asian	23.7%	44.4%	26.4%
Native American	23.3%	51.1%	24.7%
<b>Panel B: Disparity Ratios for All Firms</b>			
Non-White	23.9%	51.3%	30.9%
White Women	28.5%	46.8%	36.4%
Not Non-White/Not White Women	157.6%	138.7%	152.0%
<b>All Firms</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

*Source: CHA calculations from American Business Survey*

## 6. Conclusion

Overall, the analysis of the ABS data presented in the above tables indicate that the non-Whites and White women share of all employer firms is greater than their share of sales, payrolls, and employees. This supports the conclusion that barriers to business success disproportionately affect non-Whites and White women.

## D. Evidence of Disparities in Access to Business Capital

Capital is the lifeblood of any business. Participants in the anecdotal data collection universally agreed to this fundamental fact. The interviews with business owners conducted as part of this study confirmed that small firms, especially minority- and woman-owned firms, had difficulties obtaining needed working cap-

ital to perform on the County contracts and subcontracts, as well as expand the capacities of their firms. As demonstrated by the analyses of Census Bureau data, above, discrimination may even prevent firms from forming in the first place.

There are extensive federal agency reports and much scholarly work on the relationship between personal wealth and successful entrepreneurship. There is a general consensus that disparities in personal wealth translate into disparities in business creation and ownership.<sup>207</sup> The most recent research highlights the magnitude of the Covid-19 pandemic's disproportionate impact on minority-owned firms.

## **1. Federal Reserve Board Small Business Credit Surveys<sup>208</sup>**

The Development Office of the 12 Reserve Banks of the Federal Reserve System has conducted Small Business Credit Surveys ("SBCS") to develop data on small business performance and financing needs, decisions, and outcomes.

### **a. 2021 Small Business Credit Survey**

The 2021 SBCS<sup>209</sup> reached more than 15,000 small businesses, gathering insights about the COVID-19 pandemic's impact on small businesses, as well as business performance and credit conditions. The Survey yielded 9,693 responses from a nationwide convenience sample of small employer firms with between one and 499 full- or part-time employees (hereafter "firms") across all 50 states and the District of Columbia. The survey was fielded in September and October 2020, approximately six months after the onset of the pandemic. The timing of the survey is important to the interpretation of the results. At the time of the survey, the Paycheck Protection Program ("PPP") authorized by the Coronavirus Act, Relief, and Economic Security Act had recently closed applications, and prospects for additional stimulus funding were uncertain. Additionally, many government-mandated business closures had been lifted as the number of new COVID-19 cases plateaued in advance of a significant increase in cases by the year's end.

The 2020 survey findings highlight the magnitude of the pandemic's impact on small businesses and the challenges they anticipate as they navigate changes in the business environment. Few firms avoided the negative

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207. See, e.g., Evans, David S. and Jovanovic, Boyan, "An Estimated Model of Entrepreneurial Choice under Liquidity Constraints," *Journal of Political Economy*, Vol. 97, No. 4, 1989, pp. 808-827; David S. Evans and Linda S. Leighton, "Some empirical aspects of entrepreneurship," *The American Economic Review*, Vol. 79, No. 3, 1989, pp. 519-535.

208. This survey offers baseline data on the financing and credit positions of small firms before the onset of the pandemic. See [fedsmallbusiness.org](https://www.fedsmallbusiness.org).

209. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>.

impacts of the pandemic. Furthermore, the findings reveal disparities in experiences and outcomes across firm and owner demographics, including race and ethnicity, industry, and firm size.

Overall, firms' financial conditions declined sharply and those owned by people of color reported greater challenges. The most important anticipated financial challenge differed by race and ethnicity of the owners. Among the findings for employer firms relevant to discriminatory barriers were the following:

- For Black-owned firms, credit availability was the top expected challenge, while Asian-owned firms disproportionately cited weak demand.
- The share of firms in fair or poor financial conditions varied by race: 79% of Asian-owned firms, 77% of Black-owned firms, 66% of Hispanic-owned firms and 54% of White-owned firms reported this result.
- The share of firms that received all the financing sought to address the impacts of the pandemic varied by race: 40% of White-owned firms received all the funding sought, but only 31% of Asian-owned firms, 20% of Hispanic-owned firms and 13% of Black-owned firms achieved this outcome.

**b. 2018 Small Business Credit Survey**

The 2018 SBCS<sup>210</sup> focused on minority-owned firms. The analysis was divided into two types: employer firms and non-employer firms.

**i. Employer firms**

Queries were submitted to businesses with fewer than 500 employees in the third and fourth quarters of 2018. Of the 7,656 firms in the unweighted sample, five percent were Asian, ten percent were Black, six percent were Hispanic, and 79% were White. Data were then weighted by number of employees, age, industry, geographic location (census division and urban or rural location), and minority status to ensure that the data is representative of the nation's small employer firm demographics.<sup>211</sup>

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210. Small Business Credit Survey, <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

211. *Id* at 22. Samples for SBCS are not selected randomly. To control for potential biases, the sample data are weighted so that the weighted distribution of firms in the SBCS matches the distribution of the small firm population in the United States by number of employees, age industry, geographic location, gender of owner, and race or ethnicity of owners.

Among the findings for employer firms relevant to discriminatory barriers were the following:

- Not controlling for other firm characteristics, fewer minority-owned firms were profitable compared to non-minority-owned firms during the past two years.<sup>212</sup> On average, minority-owned firms and non-minority-owned firms were about as likely to be growing in terms of number of employees and revenues.<sup>213</sup>
- Black-owned firms reported more credit availability challenges or difficulties obtaining funds for expansion—even among firms with revenues of more than \$1M. For example, 62% of Black-owned firms reported that obtaining funds for expansion was a challenge, compared to 31% of White-owned firms.<sup>214</sup>
- Black-owned firms were more likely to report relying on personal funds of owner(s) when they experienced financial challenges to fund their business. At the same time, White- and Asian-owned firms reported higher debt levels than Black- and Hispanic-owned firms.<sup>215</sup>
- Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing.
- Forty percent of Black-owned firms did not apply because they were discouraged, compared to 14% of White-owned firms.<sup>216</sup>
- Low credit score and lack of collateral were the top reported reasons for denial of applications by Black- and Hispanic-owned firms.<sup>217</sup>

## **ii. Non-employer firms<sup>218</sup>**

Queries were submitted to non-employer firms in the third and fourth quarters of 2018. Of the 4,365 firms in the unweighted sample, five percent were Asian, 24% were Black, seven percent were Hispanic, and 64% were White. Data were then weighted by age, industry, geographic location (census division and urban or rural location), and minority status.<sup>219</sup>

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212. *Id.* at 3.

213. *Id.* at 4.

214. *Id.* at 5.

215. *Id.* at 6.

216. *Id.* at 9.

217. *Id.* at 15.

218. *Id.* at 18.

219. *Id.* at 18.

Among the findings for non-employer firms relevant to discriminatory barriers were the following:

- Black-owned firms were more likely to operate at a loss than other firms.<sup>220</sup>
- Black-owned firms reported greater financial challenges, such as obtaining funds for expansion, accessing credit and paying operating expenses than other businesses.<sup>221</sup>
- Black- and Hispanics-owned firms submitted more credit applications than White-owned firms.<sup>222</sup>

**c. 2016 Small Business Credit Surveys**

The 2016 Small Business Credit Survey<sup>223</sup> obtained 7,916 responses from employer firms with race/ethnicity information and 4,365 non-employer firms in the 50 states and the District of Columbia. Results were reported with four race/ethnicity categories: White, Black or African American, Hispanic, and Asian or Pacific Islander.<sup>224</sup> It also reported results from woman-owned small employer firms, defined as firms where 51% or more of the business is owned by women, and compared their experiences with male-owned small employer firms.

**i. The 2016 Report on Minority-Owned Businesses<sup>225</sup>**

The Report on Minority-Owned Businesses provided results for White-, Black- or African American-, Hispanic-, and Asian- or Pacific Islander-owned firms.

***Demographics<sup>226</sup>***

The SBCS found that Black-, Asian-, and Hispanic-owned firms tended to be younger and smaller in terms of revenue size, and they were concentrated in different industries. Black-owned firms were concentrated in the healthcare and education industry sectors (24%). Asian-owned firms were concentrated in professional services and real estate (28%). Hispanic-owned firms were concentrated in non-manufacturing goods production and associated services industry, including building trades

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220. *Id.*

221. *Id.* at 19.

222. *Id.* at 20.

223. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

224. When the respondent sample size by race for a survey proved to be too small, results were communicated in terms of minority vis-à-vis non-minority firms.

225. <https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms>.

226. 2016 SBCS, at 2.

and construction (27%). White-owned firms were more evenly distributed across several industries but operated most commonly in the professional services industry and real estate industries (19%), and non-manufacturing goods production and associated services industry (18%).<sup>227</sup>

#### ***Profitability Performance Index***<sup>228</sup>

After controlling for other firm characteristics, the SBCS found that fewer minority-owned firms were profitable compared to non-minority-owned firms during the prior two years. This gap proved most pronounced between White- (57%) and Black-owned firms (42%). On average, however, minority-owned firms and non-minority-owned firms were nearly as likely to be growing in terms of number of employees and revenues.

#### ***Financial and Debt Challenges/Demands***<sup>229</sup>

The number one reason for financing was to expand the business or pursue a new opportunity. Eighty-five percent of applicants sought a loan or line of credit. Black-owned firms reported more attempts to access credit than White-owned firms but sought lower amounts of financing.

Black-, Hispanic-, and Asian-owned firms applied to large banks for financing more than they applied to any other sources of funds. Having an existing relationship with a lender was deemed more important to White-owned firms when choosing where to apply compared to Black-, Hispanic- and Asian-owned firms.

The SBCS also found that small Black-owned firms reported more credit availability challenges or difficulties for expansion than White-owned firms, even among firms with revenues in excess of \$1M. Black-owned firm application rates for new funding were ten percentage points higher than White-owned firms; however, their approval rates were 19 percentage points lower. A similar but less pronounced gap existed between Hispanic- and Asian-owned firms compared with White-owned firms. Of those approved for financing, only 40% of minority-owned firms received the entire amount sought compared to 68% of non-minority-owned firms, even among firms with comparably good credit scores.

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227. *Id.* Forty-two percent of Black-owned firms, 21% of Asian-owned firms, and 24% of Hispanic-owned firms were smaller than \$100K in revenue size compared with 17% of White-owned firms.

228. *Id.* at 3-4.

229. *Id.* at 8-9; 11-12; 13; 15.

Relative to financing approval, the SBCS found stark differences in loan approvals between minority-owned and White-owned firms. When controlling for other firm characteristics, approval rates from 2015 to 2016 increased for minority-owned firms and stayed roughly the same for non-minority-owned firms. Hispanic- and Black-owned firms reported the highest approval rates at online lenders.<sup>230</sup>

Low credit score and lack of collateral were the top reported reasons for denial of Black- and Hispanic-owned firms' applications. Satisfaction levels were lowest at online lenders for both minority- and non-minority-owned firms. A lack of transparency was cited as one of the top reasons for dissatisfaction for minority applicants and borrowers.

Forty percent of non-applicant Black-owned firms reported not applying for financing because they were discouraged (expected not to be approved), compared with 14% of White-owned firms. The use of personal funds was the most common action taken in response to financial challenges, with 86% of Black-owned firms, 77% of Asian-owned firms, 76% of White-owned firms, and 74% of Hispanic-owned firms using this as its source.

A greater share of Black-owned firms (36%) and of Hispanic-owned firms (33%) reported existing debt in the past 12 months of less than \$100,000, compared with 21% of White-owned firms and 14% of Asian-owned firms. Black-owned firms applied for credit at a higher rate and tended to submit more applications, compared with 31% of White-owned firms. Black-, Hispanic-, and Asian-owned firms applied for higher-cost products and were more likely to apply to online lenders compared to White-owned firms.

### ***Business Location Impact<sup>231</sup>***

Controlling for other firm characteristics, minority-owned firms located in low-income minority zip codes reported better credit outcomes at large banks, compared with minority-owned firms in other zip codes. By contrast, at small banks, minority-owned firms located in low- and moderate-income minority zip codes experiences lower approval rates than minority-owned firms located in other zip codes.

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230. The share of minority-owned firms receiving at least some financing was lower across all financing products, compared with non-minority firms.

231. *Id.* at 17.

### *Non-employer Firms*<sup>232</sup>

Non-employer firms reported seeking financing at lower rates and experienced lower approval rates than employer firms, with Black-owned non-employer firms and Hispanic-owned non-employer firms experiencing the most difficulty. White-owned non-employer firms experienced the highest approval rates for new financing, while Black-owned non-employer firms experienced the lowest approval rates for new financing.

### ii. **The 2016 Report on Women-Owned Businesses**<sup>233</sup>

The Report on Women-Owned Businesses provides results from woman-owned small employer firms where 51% or more of the business is owned by women. These data compared the experience of these firms compared with male-owned small employer firms.

#### *Firm Characteristics: Woman-Owned Firms Start Small and Remain Small and Concentrate in Less Capital-Intensive Industries*<sup>234</sup>

The SBCS found that 20% of small employer firms were woman-owned, compared to 65% male-owned and 15% equally owned. Woman-owned firms generally had smaller revenues and fewer employees than male-owned small employer firms. These firms tended to be younger than male-owned firms.

Woman-owned firms were concentrated in less capital-intensive industries. Two out of five woman-owned firms operated in the healthcare and education or professional services and real estate industries. Male-owned firms were concentrated in professional services, real estate, and non-manufacturing goods production and associated services.<sup>235</sup>

#### *Profitability Challenges and Credit Risk Disparities*<sup>236</sup>

Woman-owned firms were less likely to be profitable than male-owned firms. These firms were more likely to report being medium or high credit risk compared to male-owned firms. Notably, gender differences by credit risk were driven by woman-owned startups. Among firms

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232. *Id.* at 21.

233. <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-WomenOwnedFirms-2016.pdf>.

234. 2016 SBCS, at 1-5.

235. Non-manufacturing goods production and associated services refers to firms engaged in Agriculture, Forestry, Fishing, and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction; Wholesale Trade; Transportation and Warehousing (NAICS codes: 11, 21, 22, 23, 42, 48-49).

236. *Id.* at 6-7.



older than five years, credit risk was indistinguishable by the owner's gender.

### ***Financial Challenges During the Prior Twelve Months***<sup>237</sup>

Woman-owned firms were more likely to report experiencing financial challenges in the prior twelve months: 64% compared to 58% of male-owned firms. They most frequently used personal funds to fill gaps and make up deficiencies. Similar to male-owned firms, woman-owned firms frequently funded operations through retained earnings. Ninety percent of woman-owned firms relied upon the owner's personal credit score to obtain financing.

### ***Debt Differences***<sup>238</sup>

Sixty-eight percent of woman-owned firms had outstanding debt, similar to that of male-owned firms. However, woman-owned firms tended to have smaller amounts of debt, even when controlled for the revenue size of the firm.

### ***Demands for Financing***<sup>239</sup>

Forty-three percent of woman-owned firms applied for financing. Like male-owned firms, woman-owned firms most frequently applied for loans and lines of credit. Both woman- and male-owned firms were most successful at small banks. Both reported that the most common reason for financing was business expansion. Woman-owned applicants tended to seek smaller amounts of financing even when their revenue size was comparable.

Overall, woman-owned firms were less likely to receive all financing applied for compared to male-owned firms. Woman-owned firms received a higher approval rate for U.S. Small Business Administration loans compared to male-owned firms. Low-credit, woman-owned firms were less likely to be approved for business loans than their male counterparts with similar credit (68% compared to 78%).

### ***Firms That Did Not Apply for Financing***<sup>240</sup>

Woman-owned firms reported being discouraged from applying for financing for fear of being turned down at a greater rate: 22% com-

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237. *Id.* at 8.

238. *Id.* at 10.

239. *Id.*, at 16.

240. *Id.* at 14.

pared to 15% for male-owned firms. Woman-owned firms cited low credit scores more frequently than male-owned firms as their chief obstacle in securing credit. By contrast, male-owned businesses were more likely to cite performance issues.

### ***Lender Satisfaction***<sup>241</sup>

Woman-owned firms were most consistently dissatisfied by lenders' lack of transparency and by long waits for credit decisions. However, they were notably more satisfied with their borrowing experiences at small banks rather than large ones.

## **2. 2021 Report on Firms Owned by People of Color**

### **a. Overview**

The *2021 Report on Firms Owned by People of Color*<sup>242</sup> compiles results from the 2020 SBCS. The SBCS provides data on small business performance, financing needs, and decisions and borrowing outcomes.<sup>243,244</sup> The Report provides results by four race/ethnicity categories: White, Black or African American, Hispanic or Latino, and Asian or Pacific Islander. For select key statistics, it also includes results for 4,531 non-employer firms, which are firms with no employees on payroll other than the owner(s) of the business.

Patterns of geographic concentration emerged among small business ownership by race and ethnicity. This was important given the progressive geographic spread of the novel coronavirus throughout 2020 and variations in state government responses to limit its spread. The Report found that 40% of Asian-owned small employer firms are in the Pacific census division, and another 28% are in the Middle Atlantic. Early and aggressive efforts by the impacted states may have affected the revenue performance of Asian-owned firms in the aggregate given their geographic concentration. Black- and Hispanic-owned small employer firms are more concentrated in the South Atlantic region, which includes states with a mix of pandemic responses. For example, while Florida lifted COVID-19 restrictions relatively quickly, the South Atlantic includes states such as Maryland and North Carolina that maintained more strict guidelines.

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241. *Id.* at 26.

242. <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

243. The SBCS is an annual survey of firms with fewer than 500 employees.

244. The 2020 SBCS was fielded in September and October 2020 and yielded 9,693 responses from small employer firms in all 50 states and the District of Columbia.

The Report found that firms owned by people of color continue to face structural barriers in acquiring the capital, business acumen, and market access needed for growth. At the time of the 2020 SBCS – six months after the onset of the global pandemic – the U.S. economy had undergone a significant contraction of economic activity. As a result, firms owned by people of color reported more significant negative effects on business revenue, employment, and operations. These firms anticipated revenue, employment, and operational challenges to persist into 2021 and beyond. Specific findings are, as follows:

**b. Performance and Challenges**

Overall, firms owned by people of color were more likely than White-owned firms to report that they reduced their operations in response to the pandemic. Asian-owned firms were more likely than others to have temporarily closed and to have experienced declines in revenues and employment in the 12 months prior to the survey. In terms of sales and the supply chain, 93% of Asian-owned firms and 86% of Black-owned firms reported sales declines as a result of the pandemic. Relative to financial challenges for the prior 12 months, firms owned by people of color were more likely than White-owned firms to report financial challenges, including paying operating expenses, paying rent, making payments on debt, and credit availability. Black-owned business owners were most likely to have used personal funds in response to their firms' financial challenges. Nearly half of Black-owned firms reported concerns about personal credit scores or the loss of personal assets. By contrast, one in five White-owned firms reported no impact on the owners' personal finances. Asian-owned firms were approximately twice as likely as White-owned firms to report that their firms were in poor financial condition.

**c. Emergency Funding**

The *Report* finds that PPP loans were the most common form of emergency assistance funding that firms sought during the period. Black- and Hispanic-owned firms were less likely to apply for a PPP loan. Only six in ten Black-owned firms actually applied. Firms owned by people of color were more likely than White-owned firms to report that they missed the deadline or were unaware of the program. Firms owned by people of color were less likely than White-owned firms to use a bank as a financial services provider. Regardless of the sources at which they applied for PPP loans, firms that used banks were more likely to apply for PPP loans than firms that did not have a relationship with a bank. While firms across race and ethnicity were similarly likely to apply for PPP loans at large banks, White- and Asian-owned firms more often applied at small banks than did Black- and Hispanic-owned firms. Black-owned firms were nearly half as likely as White-

owned firms to receive all of the PPP funding they sought and were approximately five times as likely to receive none of the funding they sought.

**d. Debt and Financing**

Black-owned firms have smaller amounts of debt than other firms. About one in ten firms owned by people of color do not use financial services.

On average, Black-owned firms completed more financing applications than other applicant firms. Firms owned by people of color turned more often to large banks for financing. By contrast, White-owned firms turned more often to small banks. Black-owned applicant firms were half as likely as White-owned applicant firms to be fully approved for loans, lines of credit, and cash advances.

Firms owned by people of color were less satisfied than White-owned firms with the support from their primary financial services provider during the pandemic. Regardless of owner race or ethnicity, firms were less satisfied with online lenders than with banks and credit unions.

In the aggregate, 63% of all employer firms were non-applicants – they did not apply for non-emergency financing in the prior 12 months. Black-owned firms were more likely than other firms to apply for non-emergency funding in the 12 months prior to the survey. One-quarter of Black- and Hispanic-owned firms that applied for financing sought \$25,000 or less. In 2020, firms owned by people of color were more likely than White-owned firms to apply for financing to meet operating expenses. The majority of non-applicant firms owned by people of color needed funds but chose not to apply, compared to 44% of White-owned firms. Financing shortfalls were most common among Black-owned firms and least common among White-owned firms.

Firms of color, and particularly Asian-owned firms, were more likely than White-owned firms to have unmet funding needs. Just 13% of Black-owned firms received all of the non-emergency financing they sought in the 12 months prior to the survey, compared to 40% of White-owned firms. Black-owned firms with high credit scores were half as likely as their White counterparts to receive all of the non-emergency funding they sought.

**e. Findings for Non-employer Firms**

Non-employer firms, those that have no paid employees other than the owner, represent the overwhelming majority of small businesses across the nation. In all, 96% of Black- and 91% of Hispanic-owned firms are non-employer firms, compared to 78% of White-owned and 75% of Asian-owned firms.<sup>245</sup>

Compared to other non-employer firms, Asian-owned firms reported the most significant impact on sales as a result of the pandemic. They were most likely to report that their firm was in poor financial condition at the time of the survey.

Compared to other non-employer firms that applied for financing, Black-owned firms were less likely to receive all of the financing they sought. Black-owned non-employer firms that applied for PPP loans were less likely than other firms to apply at banks and more often turned to online lenders. Among PPP applicants, White-owned non-employer firms were twice as likely as Black-owned firms to receive all of the PPP funding they sought.

### 3. 2020 Small Business Administration Loans to African American Businesses

As detailed in a 2021 article published in the *San Francisco Business Times*,<sup>246</sup> the number of loans to Black businesses through the SBA's 7(a) program<sup>247</sup> decreased 35% in 2020.<sup>248</sup> This was the largest drop in lending to any race or ethnic group tracked by the SBA. The 7(a) program is the SBA's primary program for financial assistance to small businesses. Terms and conditions, like the guaranty percentage and loan amount, vary by the type of loan. Lenders and borrowers can negotiate the interest rate, but it may not exceed the SBA maximum.<sup>249</sup>

Bankers, lobbyists, and other financial professionals attributed the 2020 decline to the impact of the PPP pandemic relief effort.<sup>250</sup> The PPP loan program provided the source of relief to underserved borrowers through a direct incentive for small businesses to keep their workers on payroll.<sup>251</sup> Approximately 5.2M PPP loans were made in 2020, as compared with roughly 43,000 loans made through the 7(a) program.

245. The Report notes that a future report will describe findings from the 2020 SBCS for non-employers in greater detail.

246. SBA Loans to African American Businesses Decrease 35%, *San Francisco Business Times* (August 11, 2021) at: <https://www.bizjournals.com/sanfrancisco/news/2021/08/11/sba-loans-to-african-american-businesses-decrease.html>. Data were obtained through a Freedom of Information Act request.

247. Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended).

248. The total number of 7(a) loans declined 24%.

249. The SBA caps the maximum spread lenders can charge based on the size and maturity of the loan. Rates range from prime plus 4.5% to prime plus 6.5%, depending on how much is borrowed.

250. The Coronavirus Act, Relief, and Economic Security Act ("CARES Act"), required the SBA to issue guidance to PPP lenders to prioritize loans to small businesses owned by socially and economically disadvantaged individuals including Black-owned businesses. See 116-136, §1, March 27, 2020, 134 Stat. 281.

251. PPP loans were used to help fund payroll costs, including benefits, and to pay for mortgage interest, rent, utilities, workers protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020 as well as certain supplier costs and operational expenses.

In a published statement to the *Portland Business Journal*, the American Bankers Association, an industry trade group, noted that the 2020 decline in SBA 7(a) loans to Black-owned businesses is not a one-year anomaly; it has been declining for years at a much faster rate than 7(a) loans to other borrowers. The 2020 data<sup>252</sup> reveal that the number of SBA loans made annually to Black businesses has declined 90% since a 2007 peak, more than any other group tracked by the SBA. In that interval, the overall number of loans decreased by 65%.

The nation's four largest banks (JP Morgan Chase, Bank of America, Citigroup, and Wells Fargo), which hold roughly 35% of national deposits, made 41% fewer SBA 7(a) loans to Blacks in 2020.<sup>253</sup>

PPP loans served as a lifeline during the pandemic for millions of businesses. However, industry experts maintained that PPP loans detracted from more conventional SBA lending efforts that year. Wells Fargo provided more than 282,000 PPP loans to small businesses nationwide in 2020, with an average loan size of \$50,000. Wells Fargo, the most active lender for Black-owned businesses nationwide in 2020, saw its SBA loans to Blacks drop from 263 in 2019 to 162 in 2020. Bank of America, Chase, and Citi also reported fewer SBA loans to African American businesses in 2020.

While PPPs have been heralded for providing needed monies to distressed small and mid-size businesses, data reveals disparities in how loans were distributed.<sup>254</sup> An analysis in 2020 by the *Portland Business Journal*, found that of all 5.2M PPP loans, businesses in neighborhoods of color received fewer loans and delayed access to the program during the early critical days of the pandemic.<sup>255</sup> More recent analysis released by the Associated Press indicates that access for borrowers of color improved exponentially during the later rounds of PPP funding, following steps designed to make the program more accessible to underserved borrowers.

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252. The SBA denied the original request for information; however, the publication prevailed on appeal.

253. Data obtained by the *Business Journal* does not include information from lenders who made less than ten loans in 2020.

254. While PPP loans are administered by the SBA, they are disbursed primarily through banks.

255. Many industry experts have observed that businesses that already had strong relationships with lenders were the most successful in accessing PPP loans. The nation's long history of systemic racism in banking fostered disparities in PPP loan distribution. See Alicia Plerhoples, *Correcting Past Mistakes: PPP Loans and Black-Owned Small Businesses*, at <https://www.acslaw.org/expertforum/correcting-past-mistakes-ppp-loans-and-black-owned-small-businesses/>.

#### 4. 2010 Minority Business Development Agency Report<sup>256</sup>

The 2010 Minority Business Development Agency Report, “Disparities in Capital Access Between Minority and non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs”, summarizes results from the Kauffman Firm Survey, data from the U.S. Small Business Administration’s Certified Development Company/504 Guaranteed Loan Program and additional extensive research on the effects of discrimination on opportunities for minority-owned firms. The report found that

Low levels of wealth and liquidity constraints create a substantial barrier to entry for minority entrepreneurs because the owner’s wealth can be invested directly in the business, used as collateral to obtain business loans or used to acquire other businesses.<sup>257</sup>

It also found, “the largest single factor explaining racial disparities in business creation rates are differences in asset levels”.<sup>258</sup>

Some additional key findings of the Report include:

- Denial of Loan Applications. Forty-two percent of loan applications from minority firms were denied compared to 16% of loan applications from non-minority-owned firms.<sup>259</sup>
- Receiving Loans. Forty-one percent of all minority-owned firms received loans compared to 52% of all non-minority-owned firms. MBEs are less likely to receive loans than non-minority-owned firms regardless of firm size.<sup>260</sup>
- Size of Loans. The size of the loans received by minority-owned firms averaged \$149,000. For non-minority-owned firms, loan size averaged \$310,000.
- Cost of Loans. Interest rates for loans received by minority-owned firms averaged 7.8%. On average, non-minority-owned firms paid 6.4% in interest.<sup>261</sup>

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256. Robert W. Fairlie and Alicia Robb, Disparities in Capital Access Between Minority and non-Minority Businesses: The Troubling Reality of Capital Limitations Faced by MBEs, Minority Business Development Agency, U.S. Department of Commerce, 2010 (“MBDA Report” (<https://archive.mbda.gov/sites/mbda.gov/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>)).

257. *Id.* at 17.

258. *Id.* at 22.

259. *Id.* at 5.

260. *Id.*

261. *Id.*

- Equity Investment. The equity investments received by minority-owned firms were 43% of the equity investments received by non-minority-owned firms even when controlling for detailed business and owner characteristics. The differences are large and statistically significant. The average amount of new equity investments in minority-owned firms receiving equity is 43% of the average of new equity investments in non-minority-owned firms. The differences were even larger for loans received by high sales firms.<sup>262</sup>

## 5. Federal Reserve Board Surveys of Small Business Finances

The Federal Reserve Board and the U.S. Small Business Administration have conducted surveys of discrimination in the small business credit market for years 1993, 1998 and 2003.<sup>263</sup> These Surveys of Small Business Finances are based on a large representative sample of firms with fewer than 500 employees. The main finding from these Surveys is that MBEs experience higher loan denial probabilities and pay higher interest rates than White-owned businesses, even after controlling for differences in credit worthiness and other factors. Blacks, Hispanics and Asians were more likely to be denied credit than Whites, even after controlling for firm characteristics like credit history, credit score and wealth. Blacks and Hispanics were also more likely to pay higher interest rates on the loans they did receive.<sup>264</sup>

## 6. Other Reports

- Dr. Timothy Bates found venture capital funds focusing on investing in minority firms provide returns that are comparable to mainstream venture capital firms.<sup>265</sup>
- According to the analysis of the data from the Kauffman Firm Survey, minority-owned firms' investments into their own firms were about 18% lower in the first year of operations compared to those of non-minority-owned firms. This disparity grew in the subsequent three years of operations, where minorities' investments into their own firms were about 36% lower compared to those of non-minority-owned firms.<sup>266</sup>

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262. *Id.*

263. <https://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm>. These surveys have been discontinued. They are referenced to provide some historical context.

264. See Blanchflower, D. G., Levine, P. and Zimmerman, D., "Discrimination In The Small Business Credit Market," *Review of Economics and Statistics*, (2003); Cavalluzzo, K. S. and Cavalluzzo, L. C. ("Market structure and discrimination, the case of small businesses," *Journal of Money, Credit, and Banking*, (1998).

265. See Bates, T., "Venture Capital Investment in Minority Business," *Journal of Money Credit and Banking* 40, 2-3 (2008).

266. Fairlie, R.W. and Robb, A, *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).



- Another study by Fairlie and Robb found minority entrepreneurs face challenges (including lower family wealth and difficulty penetrating financial markets and networks) directly related to race that limit their ability to secure financing for their businesses.

## E. Evidence of Disparities in Access to Human Capital

There is a strong intergenerational correlation with business ownership. The probability of self-employment is significantly higher among the children of the self-employed. A generational lack of self<sup>267</sup>-employment capital disadvantages minorities, whose earlier generations were denied business ownership through either *de jure* segregation or *de facto* exclusion.

There is evidence that current racial patterns of self-employment are in part determined by racial patterns of self-employment in the previous generation.<sup>268</sup> Black men have been found to face a “triple disadvantage” in that they are less likely than White men to: 1. Have self-employed fathers; 2. Become self-employed if their fathers were not self-employed; and 3. To follow their fathers into self-employment.<sup>269</sup>

Intergenerational links are also critical to the success of the businesses that do form.<sup>270</sup> Working in a family business leads to more successful firms by new owners. One study found that only 12.6% of Black business owners had prior work experiences in a family business as compared to 23.3% of White business owners.<sup>271</sup> This creates a cycle of low rates of minority ownership and worse outcomes being passed from one generation to the next, with the corresponding perpetuation of advantages to White-owned firms.

Similarly, unequal access to business networks reinforces exclusionary patterns. The composition and size of business networks are associated with self-employment rates.<sup>272</sup> The U.S. Department of Commerce has reported that the ability to form strategic alliances with other firms is important for success.<sup>273</sup> Minorities

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267. Fairlie, R.W. and Robb, A., *Race and Entrepreneurial Success: Black-, Asian- and White-Owned Businesses in the United States*, (Cambridge: MIT Press, 2008).
268. Fairlie, R.W., “The Absence of the African-American Owned Business, An Analysis of the Dynamics of Self-Employment,” *Journal of Labor Economics*, Vol. 17, 1999, pp 80-108.
269. Hout, M. and Rosen, H. S., “Self-employment, Family Background, and Race,” *Journal of Human Resources*, Vol. 35, No. 4, 2000, pp. 670-692.
270. Fairlie, R.W. and Robb, A., “Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital,” *Journal of Labor Economics*, Vol. 24, No. 2, 2007, pp. 289-323.
271. *Id.*
272. Allen, W. D., “Social Networks and Self-Employment,” *Journal of Behavioral and Experimental Economics (formerly The Journal of Socio-Economics)*, Vol. 29, No. 5, 2000, pp. 487-501.
273. “Increasing MBE Competitiveness through Strategic Alliances” (Minority Business Development Agency, 2008).

and women in our interviews reported that they felt excluded from the networks that help to create success in their industries.

## **F. Conclusion**

The economy-wide data, taken as a whole, paint a picture of systemic and endemic inequalities in the ability of firms owned by minorities and women to have full and fair access to the County's contracts and associated subcontracts. This evidence supports the conclusion that absent the use of narrowly tailored contract goals, these inequities create disparate impacts on M/WBEs that may need to be addressed through race-conscious measures.

## VI. QUALITATIVE EVIDENCE OF RACE AND GENDER BARRIERS IN TRAVIS COUNTY'S MARKET

In addition to quantitative data, a disparity study should further explore anecdotal evidence of experiences with discrimination in contracting opportunities. This evidence is relevant to this study and the question of whether despite the operations of Travis County's Historically Underutilized Business ("HUB") program for minority- and woman-owned firms, M/WBEs continue to face discriminatory barriers to their full and fair participation in County opportunities. Anecdotal evidence also sheds light on the likely efficacy of using only race- and gender-neutral remedies designed to benefit all small contractors to combat discrimination and achieve the objectives of the HUB program. As discussed in the Legal Chapter, this type of anecdotal data has been held by the courts to be relevant and probative of whether the County may use narrowly tailored HUB contract goals to remedy the effects of past and current discrimination and create a level playing field for contract opportunities for all firms.

The Supreme Court has held that anecdotal evidence can be persuasive because it "brought the cold [statistics] convincingly to life."<sup>274</sup> Evidence about discriminatory practices engaged in by prime contractors, agency personnel, and other actors relevant to business opportunities has been found relevant regarding barriers both to minority firms' business formation and to their success on governmental projects.<sup>275</sup> While anecdotal evidence is insufficient standing alone, "[p]ersonal accounts of actual discrimination or the effects of discriminatory practices may, however, vividly complement empirical evidence. Moreover, anecdotal evidence of a [government's] institutional practices that exacerbate discriminatory market conditions are [sic] often particularly probative."<sup>276</sup> "[W]e do not set out a categorical rule that every case must rise or fall entirely on the sufficiency of the numbers. To the contrary, anecdotal evidence might make the pivotal difference in some cases; indeed, in an exceptional case, we do not rule out the possibility that evidence not reinforced by statistical evidence, as such, will be enough."<sup>277</sup>

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274. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 399 (1977).

275. *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1168-1172 (10<sup>th</sup> Cir. 2000), *cert. granted*, 532 U.S. 941, *then dismissed as improvidently granted*, 534 U.S. 103 (2001).

276. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1120, 1530 (10<sup>th</sup> Cir. 1994).

277. *Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d 895, 926 (11<sup>th</sup> Cir. 1997).

There is no requirement that anecdotal testimony be “verified” or corroborated, as befits the role of evidence in legislative decision-making, as opposed to judicial proceedings. “Plaintiff offers no rationale as to why a fact finder could not rely on the State’s ‘unverified’ anecdotal data. Indeed, a fact finder could very well conclude that anecdotal evidence need not—indeed cannot—be verified because it is nothing more than a witness’ narrative of an incident told from the witness’ perspective and including the witness’ perception.”<sup>278</sup> Likewise, the Tenth Circuit held that “Denver was not required to present corroborating evidence and [plaintiff] was free to present its own witnesses to either refute the incidents described by Denver’s witnesses or to relate their own perceptions on discrimination in the Denver construction industry.”<sup>279</sup>

To explore this type of anecdotal evidence of possible discrimination against minorities and women in Travis County’s geographic and industry markets and the effectiveness of its current race-conscious and race-neutral measures, we conducted five small group business owner and stakeholder interviews, totaling 51 participants. We also received written comments. We met with a broad cross section of business owners from the County’s geographic and industry markets. Firms ranged from large long-established prime contracting and consulting firms to new market entrants and established family-owned firms. We sought to explore their experiences in seeking and performing public and private sector prime contracts and subcontracts with the County, other government agencies, and in the private sector. We also elicited recommendations for improvements to the HUB Program.

Many minority and woman owners reported that while some progress has been made in integrating their firms into public and private sector contracting activities through race- and gender-conscious contracting programs like that of Travis County, significant barriers on the basis of race and/or gender remain. There was near universal agreement that race- and gender-based contract goals remain necessary to ensure equal opportunities to compete for the agency’s work.

We also conducted an electronic survey of firms in the market area about their experiences in obtaining work, marketplace conditions and the HUB program. One-hundred and five M/WBEs responded to the survey. The results were similar to those of the interviews. Among minority- and woman-owned firms, almost 30% (29.5%) reported they still experience barriers to equal contracting opportunities; over a quarter (25.7%) said their competency was questioned because of their race or gender; and almost 15% (14.3%) indicated they had experienced job-related sexual or racial harassment or stereotyping. The survey comments were even more pointed. Many reflected experiences with discriminatory attitudes and overt racism and sexism.

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278. *H.B. Rowe Co., Inc. v. Tippet*, 615 F.3d 233, 249 (4<sup>th</sup> Cir. 2010).

279. *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 989 (10<sup>th</sup> Cir. 2003), *cert. denied*, 540 U.S. 1027 (2003).

The following are summaries of the issues discussed. Quotations are indented and may have been shortened for readability. The statements are representative of the views expressed over the many sessions by numerous participants.

We have also appended a summary of the anecdotal results of the numerous disparity studies we have conducted in Texas.<sup>280</sup>

## **A. Business Owner and Stakeholder Representative Interviews**

Many minority and woman owners reported that they continue to experience negative assumptions and perceptions about their competency and capabilities. There is often a stigma to being an M/WBE.

Sometimes [minority status is] a disadvantage, unfortunately.

Everything has to be perfect for us to get the same credit that a non-minority crew would get or a company would get. I think that's pretty typical of any bias that you see in the [Texas construction] industry.

[Being certified] can have hold some sort of stigma.

We have been told not to lead with that. When we do proposals for especially local government not to have that be in the first page of what we do. Bury it down there, somewhere in, because we'll be discounted if we do.

Usually, the first reaction that they have to DBEs is not a pleasant one.... Not all DBEs are equal on the business level. And when they've had some bad experiences, it can give them an opportunity or basically kind of make them wince or shy away. So, I try to avoid that at all costs and do the qualifications first. Once they're interested, genuinely interested because of the qualifications and it fills a need for them, then I'll say, "Oh, yes. And as a value add, we are also..."

I worked with a company for some years performing services, but we had never met them. They knew of us. They knew we provided good service and all. And then someone from my office had told them that I was in the [city] area at a meeting. And they just wanted me to stop by because I was there and they wanted to meet me face to face. And after that, that business was over.

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280. Appendix E: Qualitative Evidence from Texas Disparity Studies.

You just don't even think about it anymore. It's just so standard and how we have to facilitate life, have to navigate.... You just kind of get used to the game.... We definitely send in our vice president for the software development. We'll send him alongside my husband. My husband and I co-own the software development firm. We'll send in our vice president who is a White guy. And they normally will focus their attention on him, although my husband is the CEO.

[Maybe] they think that you're going to require more effort, on their part, because you're a minority. That it's an investment of their time, that they're going to have to bring you along. That's too bad. I don't know how to get over that hurdle, because if you're too knowledgeable, then they also think that you're a threat. It's really tough, a tough situation, but we've developed partners.

Some women continue to encounter sexist behaviors and attitudes.

I'm generally the only woman in the room, so that's definitely an issue for me.

You kind of try to figure out over the years how they want you to be, and you try to be that. But, it's still a surprise a lot of times when you are a strong woman, you have strong opinions, you know what you're doing, and you run across a younger Turk or who's an alpha. They simply do not respond to you.

If you are a woman, and you've had any age on you, you've been through tremendous discrimination during your lifetime.... When I went to college, I went to apply for a scholarship with the college. My first love was engineering, which was what I wanted to pursue. When I went in to talk to the counselor, unabashedly sat there and told me, "I'm not even going to accept your application, because if I let you apply for one of these scholarships, you'll get. You will take one away from my boys. I'm not going to let that happen because you're only going to get married and have kids and never use it." And sent me away.

Going to my boss for a raise, because of performance and was told, "No, no, no. You've got this minuscule raise. You're at the top of the pay grade, there is no more money."... Month later that he's hired a new guy on at \$15,000 more a year than he's paying me. And when I confronted him about it, you get told, "Well, you have to understand, he's the head of a household. You have a husband to support you, and so perfectly justified to pay you \$15,000 less." But it goes on and on and on and on.

I had a manufacturer's rep that came to visit us that wanted to solicit our business.... [My husband, who is retired,] came to sit in and the before we could hardly say anything, the gentleman sits down and he slaps his knee and he goes, "Ha. You guys are doing it right. I see that you put the business in your wife's name so that you can take advantage of all the diversity certifications." My husband starts laughing and I let him know that would be fraud and that "No. You will be doing business with me." He just clammed up and I tried to make nice and could not get him to open up at all. Meeting ended. A couple months later, I was applying to a manufacturer to become a distributor for the company, went through the paperwork, and I was denied. First time I had ever been denied by a manufacturer before. Of course, I wanted to know why and I called to ask and they said, "Well, we have a rep in the area who gave you a very bad write-up and said that we should not do business with you." I couldn't talk with him; it was a couple of guys that made the decision and that was the end of it.... I have reps or regional reps that will tell me flat out, "You're not taking business away from my boys."

I do work in technology and yeah, I've had some really bad experiences with White male business owners.... The industry is essentially run by White dudes.

In technology, there's always like a guy who's got another guy picked out, because they like hang out and bro down or whatever it is that they do. But they still want to go through the motions because either it makes them look a certain way or they want to perform caring for certain reasons. But ultimately you end up spinning your wheels.... I also have my partner is in sales and I'll definitely have him talk to clients. He's just this big, tall dude. And so, unfortunately, it's just easier for him. I'm like, "You talk to them." And then afterwards, if they're ready to throw out some money, then I'll talk to them about the technical stuff. But I'm just not going to invest all of this technical knowledge into talking to people who are going to think I'm a girl when I'm 40.... I'm going to send the man in and just not try to fight that battle because it's exhausting.

One White woman stated that she has never suffered from sexism.

My gender does not matter.... We really don't have any issues in getting jobs.

Most M/WBEs agreed that HUB program goals remain necessary to level the playing field on the basis of race or gender.

The goals need to really stay in place because it does help get jobs. I know I had a hard time in the beginning because the fact of it was I wasn't known.

By all means, the goals need to stay in place because it does help us get work. I think without them, it would really, really be devastating.

Private sector work was reported to be especially difficult to access.

With Tesla, I spent hours and hours and hours trying to deal with them and to get in there, and I just finally got so disgusted with the paperwork that they were requiring. I called them and I talked to them and tried to work with them, and it seemed like the chase wasn't worth the catch. I just strayed away from it and just went on. It was just ridiculous for me.

By the time you do all that pre-qualification paperwork and say you spend eight hours on it or so, well, you could be spending eight hours on something that you feel that you can get.

I tried the Tesla, too, and it was just so frustrating, I gave up on it, too.

## **B. Anecdotal Survey**

We also conducted an electronic survey of firms on our Master M/W/DBE/HUB Directory; prime firms in the Contract Data File; firms identified through our outreach efforts; and firms that provide written inquiries or comments. The survey was comprised of up to forty-five closed- and open-ended questions and replicated the topics discussed in the business owner interviews. The questions focused on doing business in the Travis County market area, race- or gender-based barriers and negative perceptions, access to networks and information, experiences in obtaining work and capacity development.

The survey was emailed to 2,488 people, every week for five weeks. Telephone follow-up was conducted to encourage firms to complete the survey and stimulate responses. One hundred and seventy-two gross responses were received. After accounting for incomplete and non-relevant responses, usable responses equaled 130 for a net response rate of 5.2%. One hundred and five minority- and woman-owned firms completed the survey for a 4.2% net response rate. A total of 25 publicly held and non-M/WBE firms completed the survey, representing a one percent net response rate.



## 1. Respondents' Profiles

Table 6-1: Distribution of race, gender and contracting category of survey respondents:

**Table 6-1: Distribution of race and gender of survey respondents.**

Firm Ownership Group	Total	Percent
African American	21	16.2%
Hispanic	34	26.2%
Asian-Pacific/Subcontinent Asian American	6	4.6%
Native American/Alaska Native	2	1.5%
Non-Minority Women	42	32.3%
<b>HUB Total</b>	<b>105</b>	<b>80.8%</b>
Publicly Hel, Non-DBE Total	25	19.2%
<b>Respondents Total</b>	<b>130</b>	<b>100.00%</b>

Chart 6-1: Among M/WBEs, construction firms accounted for 18% of the responses; construction-related services firms for 41%, services 27% and commodities 13%.

Chart 6-1: Industry Distribution

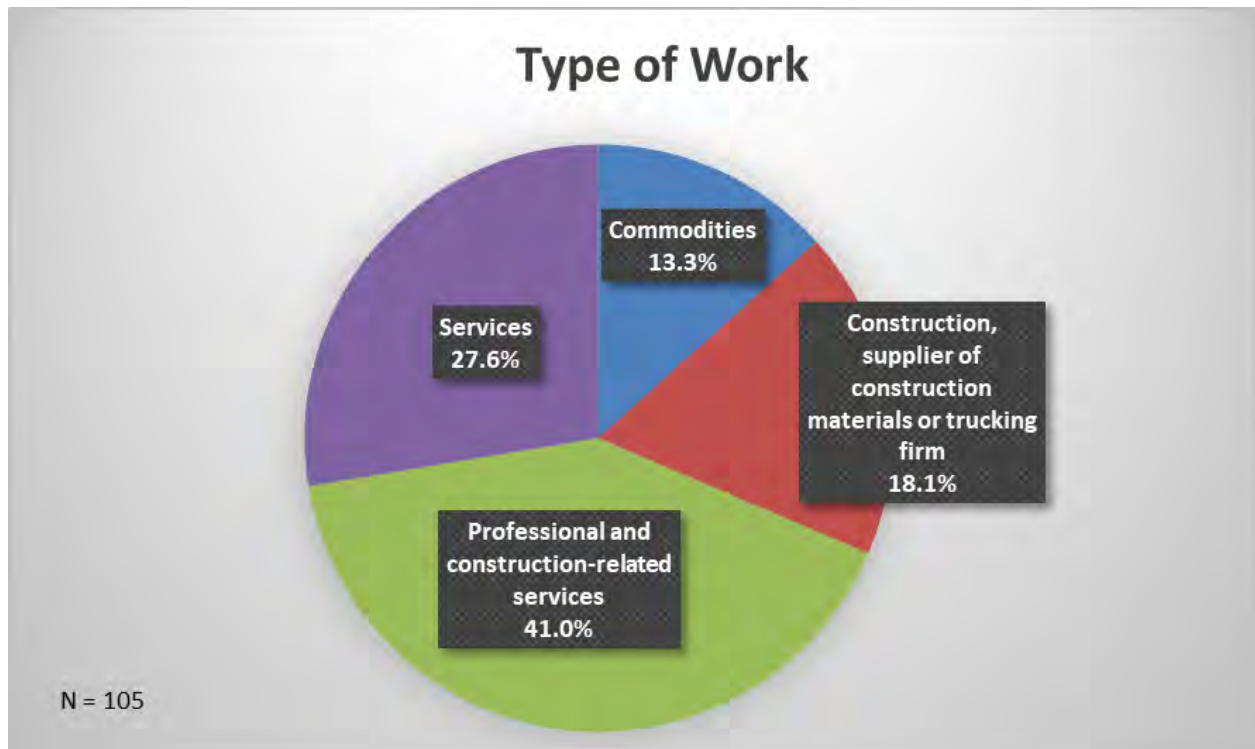


Chart 6-2: A third of M/WBE respondents indicated that over 75% of their gross revenue was derived from government work.

Chart 6-2: Revenue from Government Work

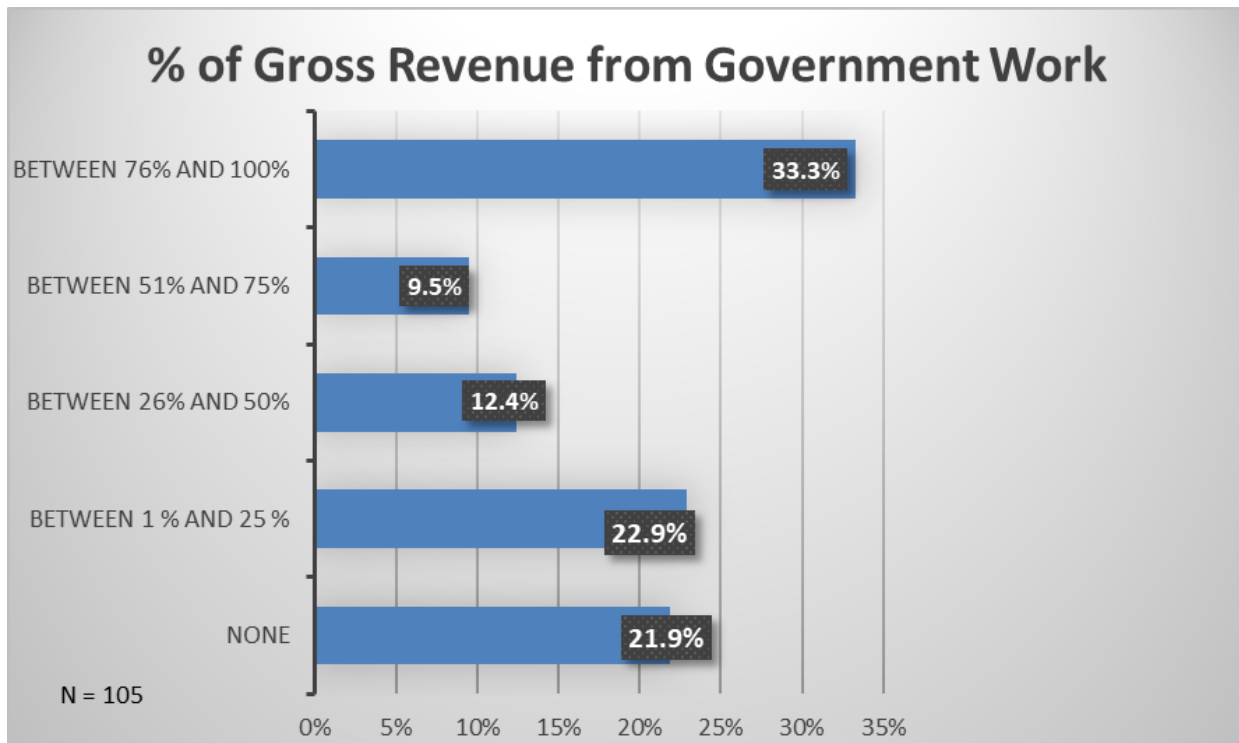
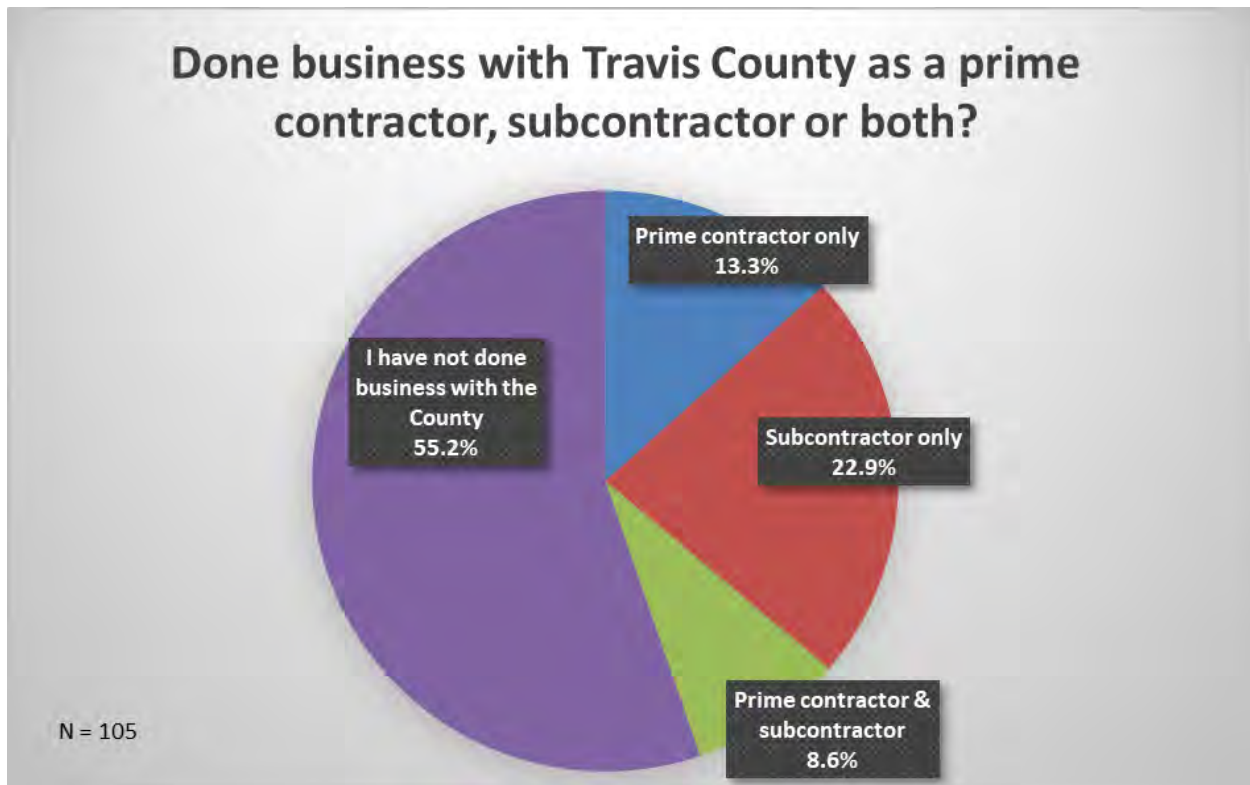


Chart 6-3: Among M/WBEs, 13.3% of the firms had worked on County projects only as a prime contractor or consultant; 22.9% had worked only as a subcontractor; 8.6% had worked as both a prime contractor or consultant, and as a subcontractor or subconsultant; and 55.2% had not participated on any Travis County contracts. The majority (87.6%) of minority- and woman-owned respondents were certified as a HUB with the state of Texas, City of Austin, the Texas Unified Certification Program or the South Central Texas Regional Certification Agency.

Chart 6-3: Contractor Status with Travis County



## 2. Results of the Survey

### a. Discriminatory Barriers and Perceptions

Chart 6-4: Almost 30% answered yes to the question, “Do you experience barriers to contracting opportunities based on race and/or gender?”

**Chart 6-4: Barriers to Contracting Opportunities Based on Race and Gender**

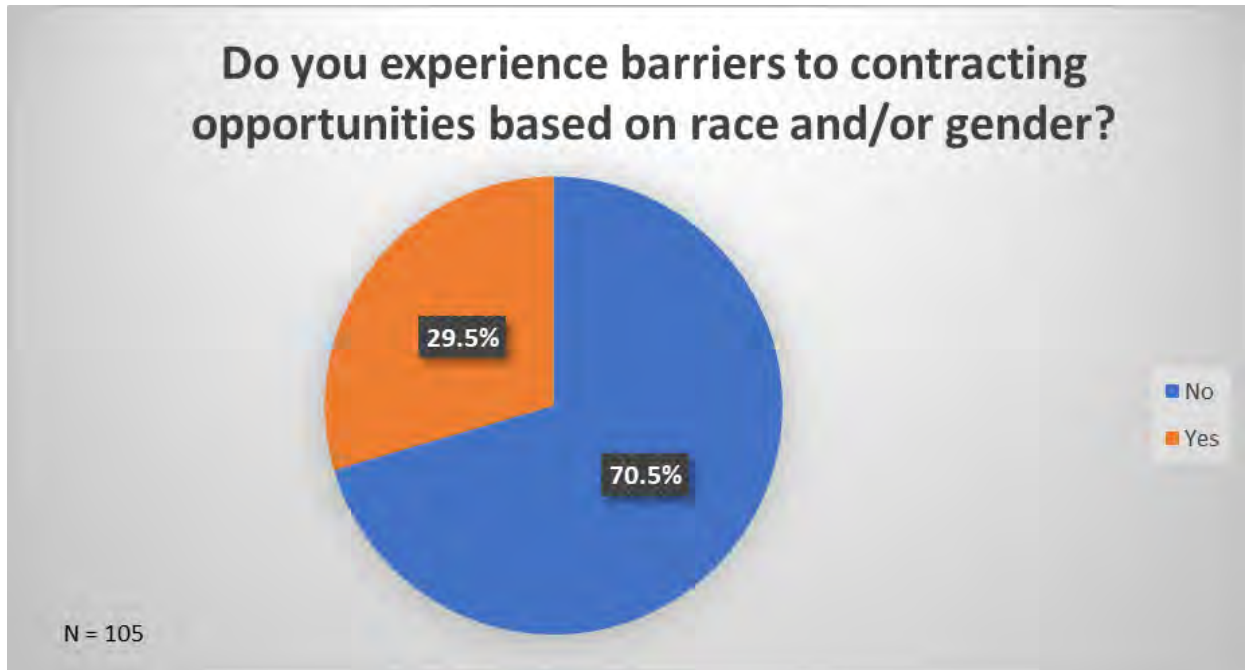


Chart 6-5: A little more than 25% (25.7%) answered yes to the question, "Is your competency questioned based on your race and/or gender?"

**Chart 6-5: Negative Perception of Competency Based on Race or Gender**



Chart 6-6: Most respondents (85.7%) indicated that they do not experience job-related sexual or racial harassment or stereotyping.

**Chart 6-6: Industry-Related Sexual or Racial harassment or Stereotyping**

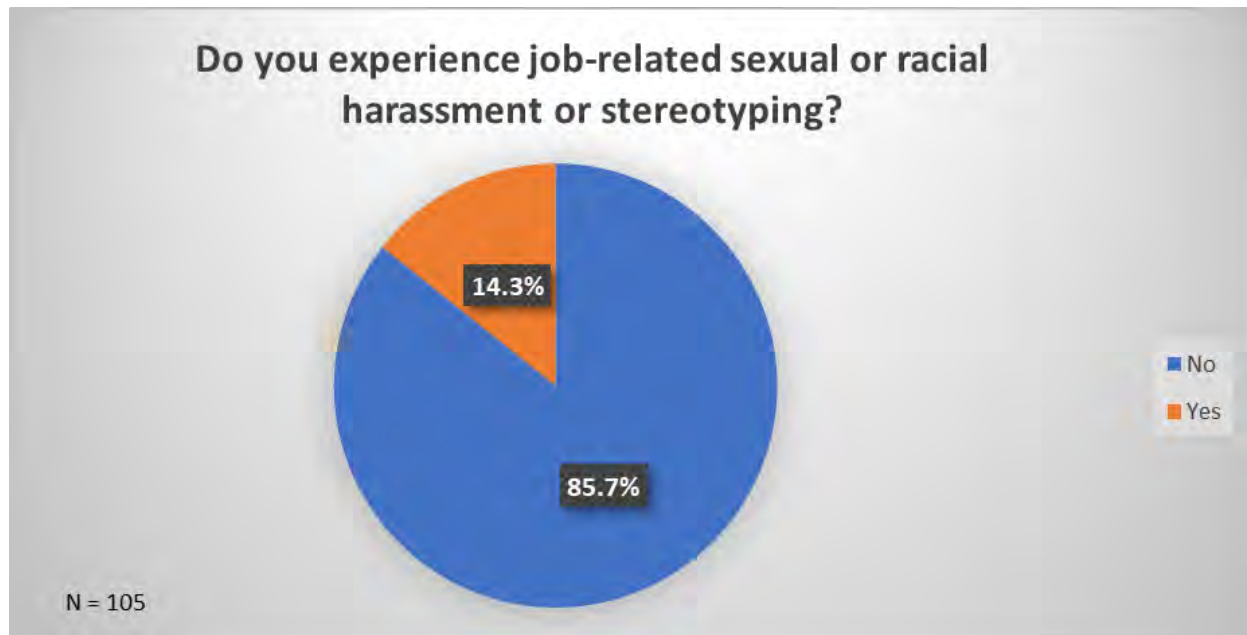


Chart 6-7: The majority (85.7%) reported that they do not experience discrimination from suppliers or subcontractors because of their race and/or gender.

**Chart 6-7: Supplier Pricing and Terms Discrimination Based on Race and Gender**



**b. Access to Formal/Informal Business and Professional Networks**

Chart 6-8: Almost a quarter (22.9%) of M/WBE respondents reported that they did not have the same access to information as non-certified firms in their industry.

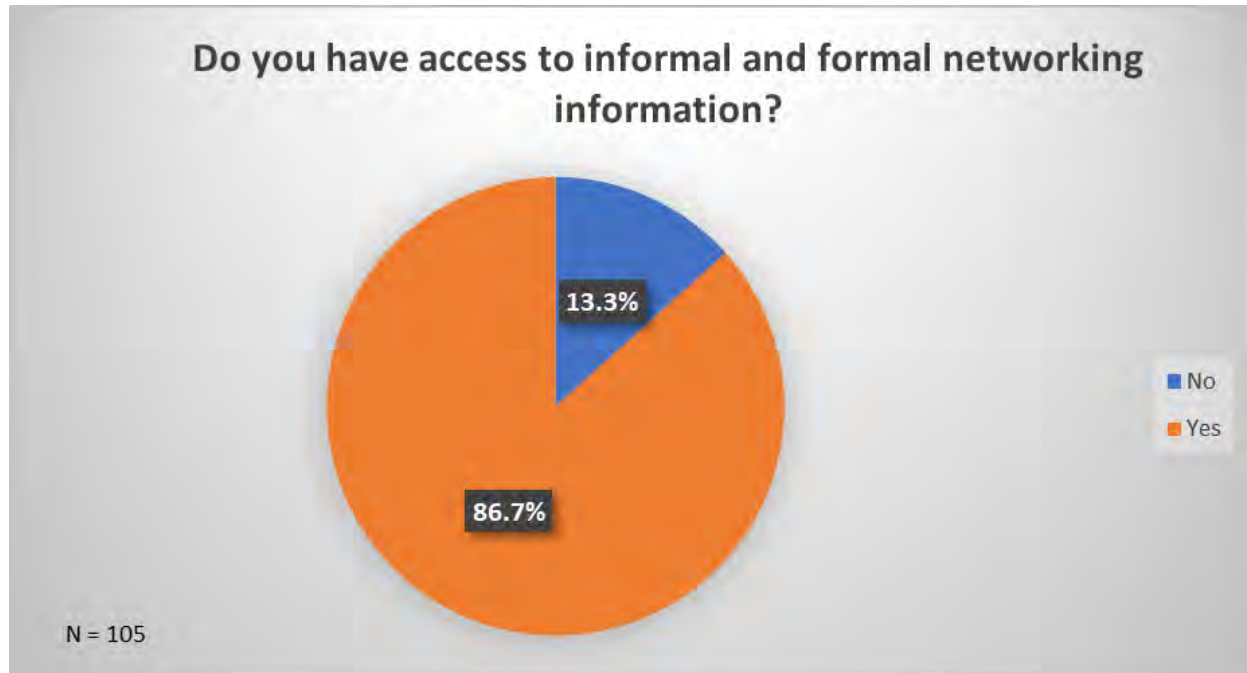
Chart 6-8: Access to the Same Information as Non-Certified Firms



Chart 6-9: The great majority (86.7%) answered yes to the question, “Do you have access to informal and formal networking information?”



**Chart 6-9: Access to Informal and Formal Networking Information**



**c. Access to Financial Supports**

Chart 6-10: Among M/WBEs, 8.6% reported difficulties in obtaining insurance. Only four percent of the non-M/WBE respondents reported any difficulties in obtaining insurance.

**Chart 6-10: Barriers to Obtaining Insurance**

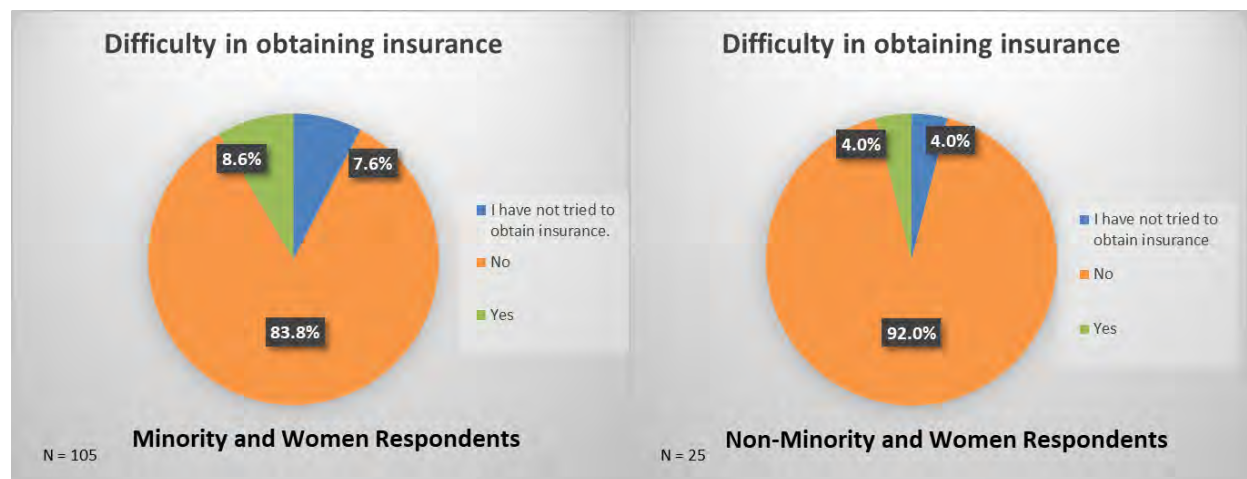


Chart 6-11: Among M/WBEs, 8.6% reported barriers to obtaining surety bonding services. Only four percent of the non-M/WBEs respondents reported barriers to obtaining surety bonding services.

**Chart 6-11: Barriers to Obtaining Bonding**

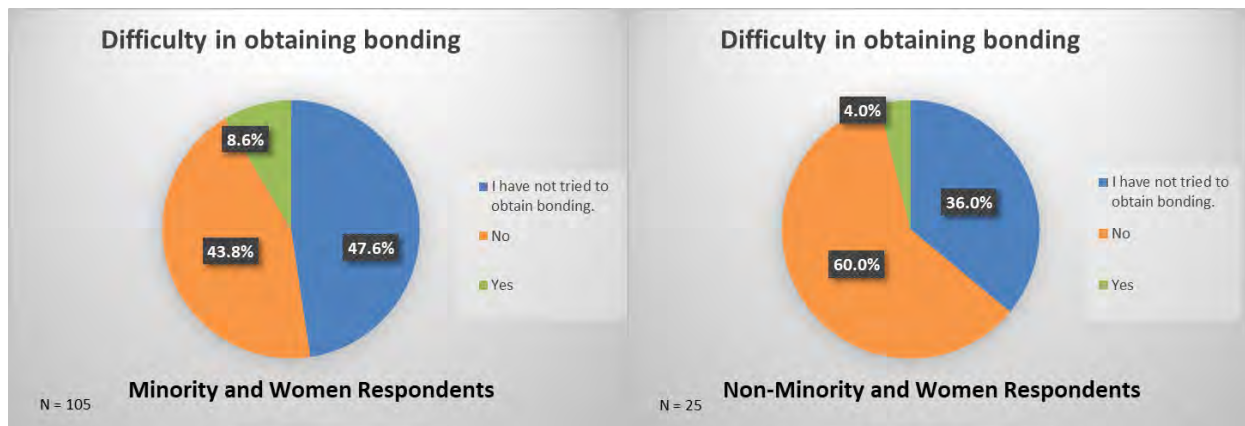
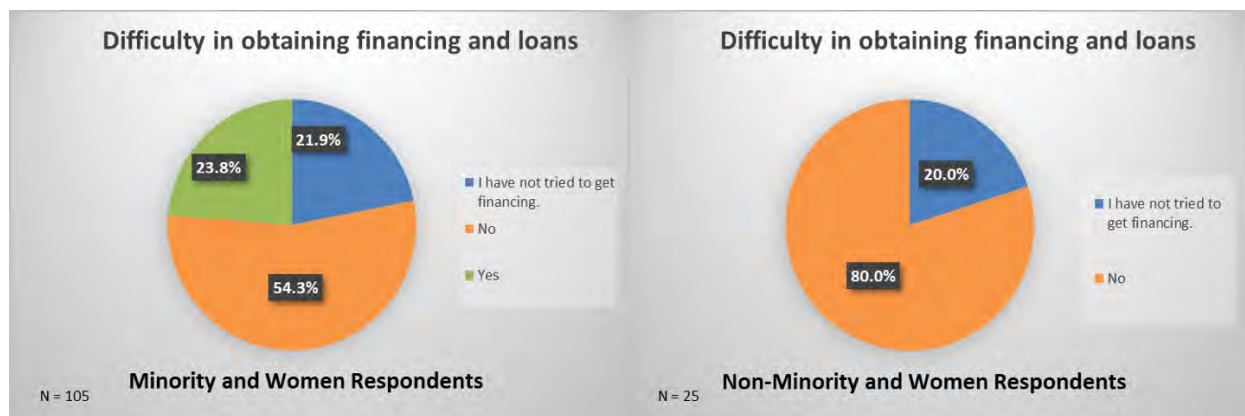


Chart 6-12: Almost a quarter of M/WBEs (23.8%) reported experiencing barriers to obtaining financing and business capital. In contrast, non-M/WBE firms reported zero difficulties in obtaining any of these financial supports.

**Chart 6-12: Barriers to Obtaining Financing and Loans**



**d. Obtaining Work, Contract Size vs. Capacity and Payment on an Equal Basis**

Chart 6-13: A little over half (51.4%) of M/WBEs reported that they are solicited for Travis County or government projects with HUB Goals.

**Chart 6-13: Solicitation for County or Government Projects with HUB Goals**

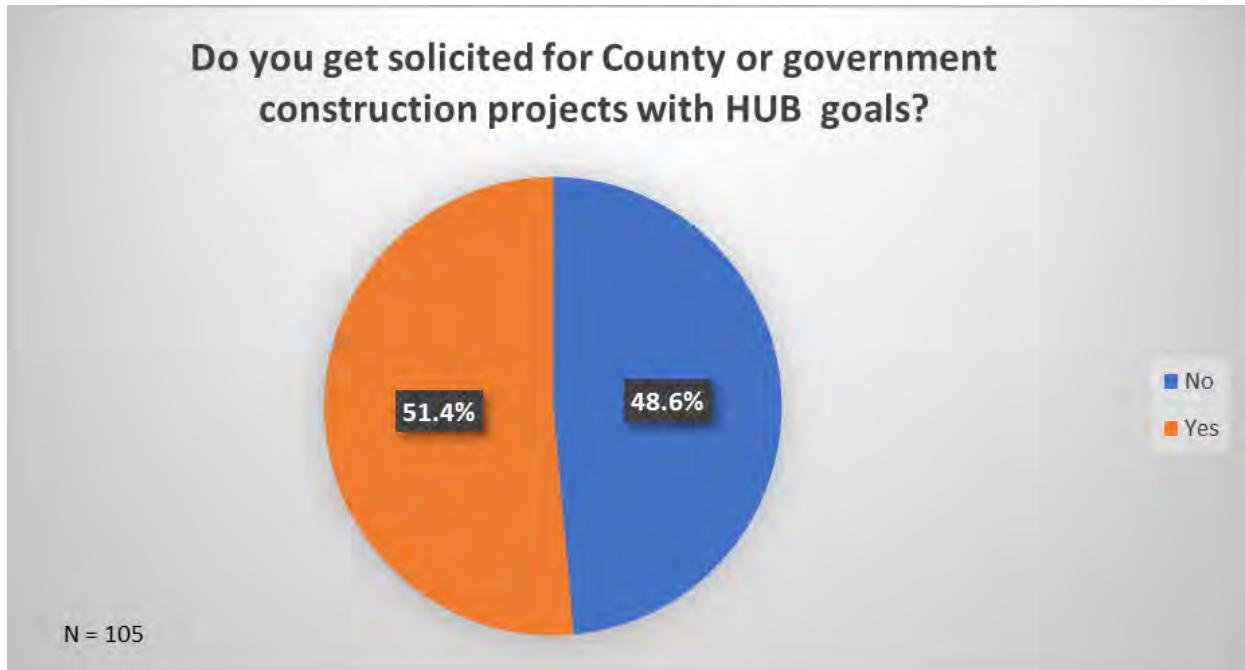


Chart 6-14: About the same number of M/WBEs, 52.4%, reported they are solicited for private projects and projects without goals.

**Chart 6-14: Solicitation for Private Projects and Projects Without Goals**



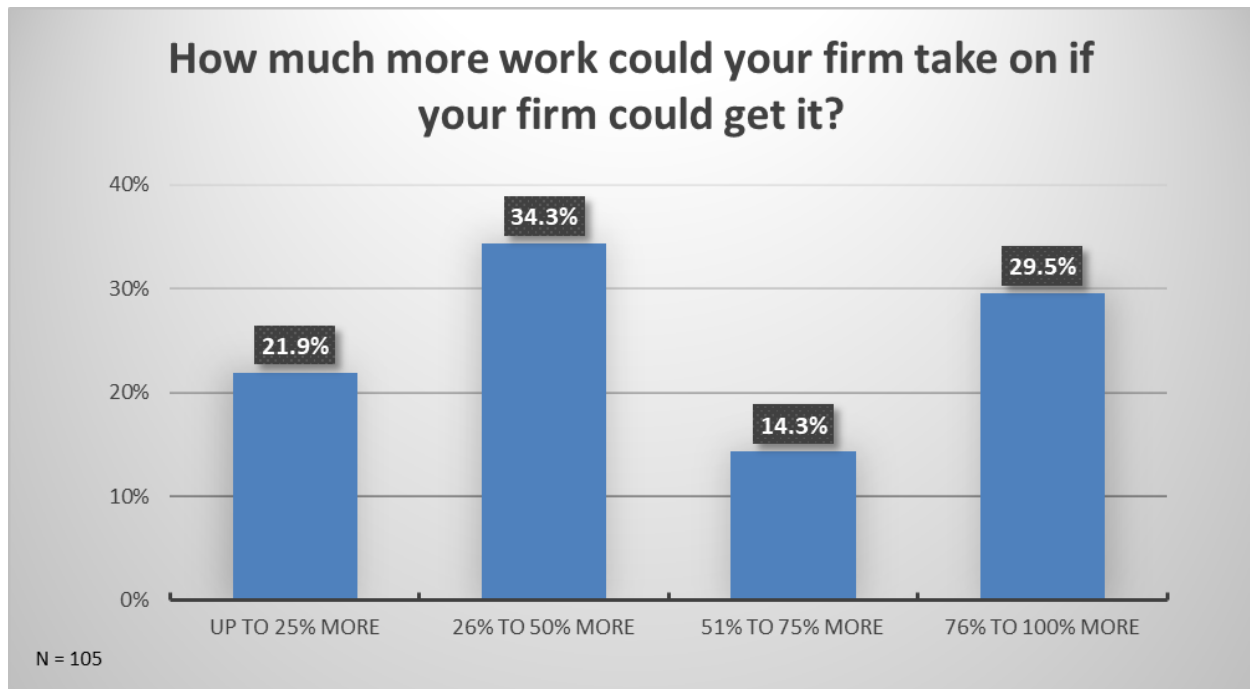
Chart 6-15: Almost 55% (54.3%) said their firm's contract size was either well below or slightly below the amount they are qualified to perform.

**Chart 6-15: Firm Contract Size vs. Contract Amounts Qualified to Perform**



Chart 6-16: Many M/WBE firms indicated they could take on more work. Almost 30% said they could increase their work by 75% to 100%.

Chart 6-16: Capacity to Take On Work



**e. Payment on an Equal Basis**

Chart 6-17: Almost 75% (72.7% of the respondents who had reported doing work for Travis County stated that the County pays them promptly. However, only 44% who had reported doing work for prime contractors/consultants said that prime contractors/consultants pay promptly.

**Chart 6-17: Prompt Payment within 30 Days by the County and Prime Contractors**

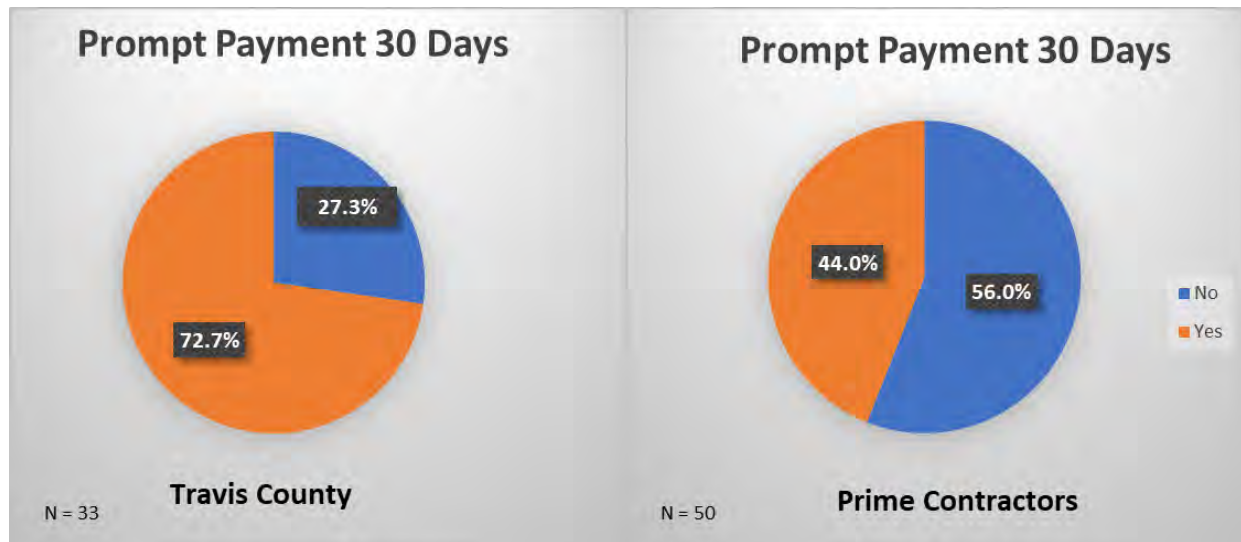
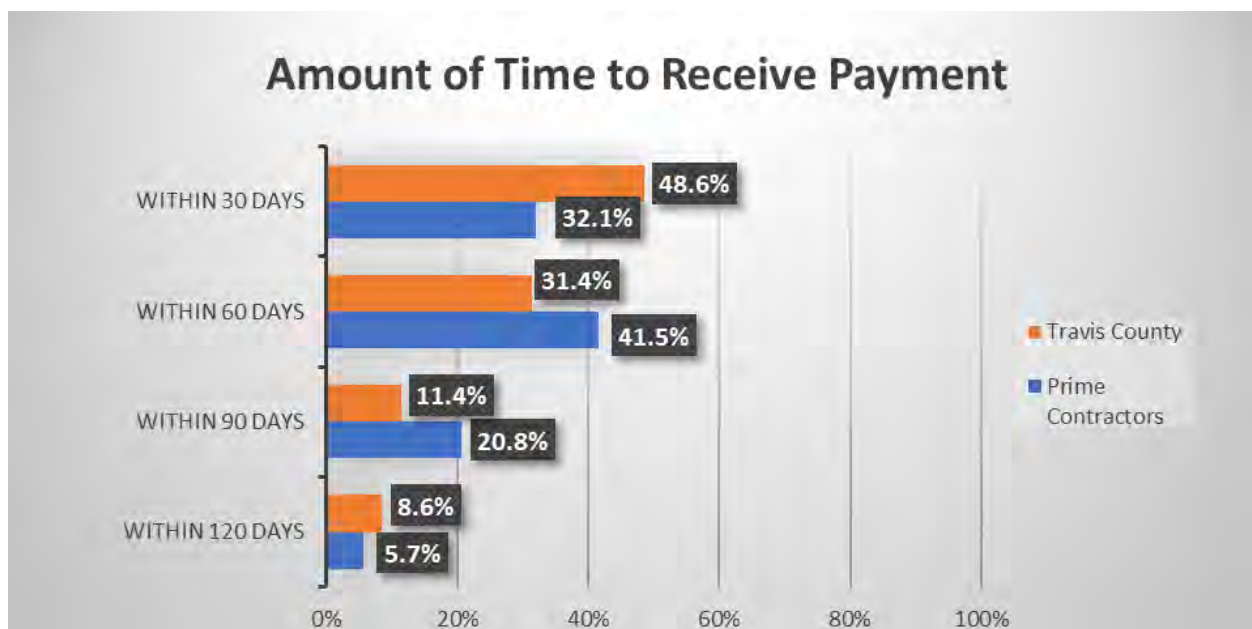


Chart 6-18: Eighty percent of M/WBEs performing work for Travis County reported receiving payment within 60 days; 11.4% within 90 days; and 8.6% within 120 days or more. Prime vendors were reported to pay more slowly. Almost 74% (73.6%) said prime vendors paid within 60 days; 20.8% within 90 days; and 5.7% within 120 days or more.

**Chart 6-18: Amount of Time to Receive Payment from the County and Prime Contractors**



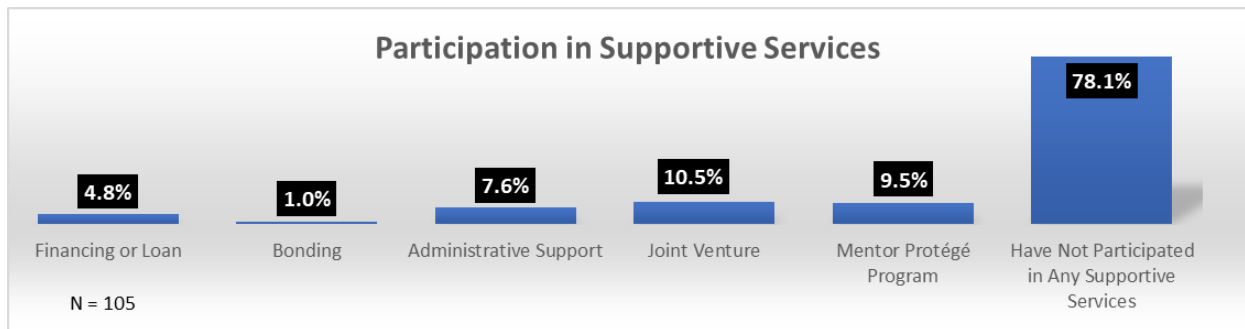


#### f. Capacity Development<sup>281</sup>

Chart 6-19: Less than 25% (21.9%) of M/WBEs reported participating in M/WBE business support or development activities. 78.1% indicated they had not participated in any of these programs.

- 4.8% had participated in financing or loan programs.
- 1.0% had accessed bonding support programs.
- 9.5% had participated in a mentor-protégé program or relationship.
- 7.6% had received support services such as assistance with marketing, estimating, information technology.
- 10.5% had joint ventured with another firm.

**Chart 6-19: Participation in Supportive Services**



## C. Written Survey Responses

Open-ended survey responses were consistent with the information provided in the business owner interviews. M/WBE responses centered on negative assumptions and perceptions about their competency and capabilities, and barriers to getting County work. Responses to these questions have been categorized and are presented below.

Racial discrimination and negative attitudes about competency continue to impinge upon the ability of minority firms to obtain contracts on an equal basis.

Again! The system is already set up to fail you if you are in the minority.

Racial discrimination [is a barrier].

<sup>281</sup>. Respondents were allowed to check more than one type of support.

Racism still exists and the construction industry is one that still has a lot of small to mid-size business that still discriminate.

Again, having access to some of the opportunities are based solely on race.

[A government official told me that experience in the American Indian court system is not a factor to be] considered because it [the experience] was law and order over American Indians. In over 15 years of being an active HUB I have only received one (1) four-hour project, three years ago.

Some woman and minority business owners reported outright sexual harassment and racist comments.

In general, have to limit the networking activities we participate in to avoid potential sexual harassment situations with potential customers.

Not at Travis County, but elsewhere, potential/current clients have approached me for sexual favors and inappropriately touched me without permission.

When [I] had a sunburn [I] was asked by owner employer what makes the red man red?

One example: We worked on a job as a subcontractor and there were many subtle and not so subtle issues that seemed to occur specifically because of race. These issues were from the inspector and [manager] in charge. The subcontractor would share some things, but there were other comments that he would say that we didn't want to hear.

In one instance, another subcontractor had to request one of its team to leave the site due to the aggressive words and attitude.

The experiences of several Black respondents were especially negative.

I believe black businesses are stereotyped as less than equipped for major projects.

Most business are partial to white business prior to going to a black business.

I have witnessed a company go to a white company outside the USA to come in and provide the service when we are located in the USA. When they run into an issue, only then will we receive a call for help.

It's a daily struggle [racial harassment]. I have to hide the fact that I'm black and female in order to even to be considered.



Again, [as an African American] this [these barriers and questioning of my competency] happened in the past when business was mostly local. It is now mostly online and I no longer see customers.

Because I'm Black [I have had difficulty in obtaining loans or financing and bonding].

While some minorities and women reported overt discrimination reported discrimination that was difficult to document.

When something is systemic. It's hard to describe. You simply won't see the opportunities until it's too late.

[Our competency is] not usually questioned outright. However, you know when its questioned.

I don't know if they are discriminating based on race or gender, however I can point to specific cases where I was not awarded the contract and I was over 50% lower than the company who won.

One, again, it's just the ups and downs a small company goes through that makes it seem as if it's not stable, even though like ourselves, we're still going over 10 years. Two, it can be race. It's interesting sometimes how you may have a deal moving along and then send in your license and all of a sudden, everything comes to a halt.

I don't know if the barriers are due to my race or gender, what I know is that even when I'm the lowest bidder with a quality product I'm not getting the awards.

If I am being discriminated against because of my gender or race or price it's not like someone is going to say that to me.

Hard to know this for sure, you can't know what you don't know about what people think of you.

Again, no proof.

Probably, but I cannot say for sure because I've not been contracted by anyone.

Many woman owners reported sexism and stereotyping about their roles and authority that precluded them from business opportunities.

I've had people ask if my husband started and/or runs the business. I'm single.

Many women photographers are treated as inferior to male counterparts. Women are seen as family/wedding photographers and not as commercial or editorial photographers.

The potential of having children has been attributed to future competency judgments.

The reason I work for myself is because as an employee I am constantly undervalued and demeaned because I am not a man.

Some people have questioned [my] ability based on gender.

Stereotyping that I'm weak.

Not necessarily on a Travis County project, but on construction projects, [I] have received from male workforce (other subs or contractors on the projects) comments such as "just not used to seeing women on a construction site" or have received push back from male construction site workers who did not want to take correction or direction from a female.

Received questioning of competency on ability and knowledge in landscape construction during installation of a major project. Not uncommon for another contractor or sub to avoid asking a female on our team by asking a male on our team.

Presumption that women prefer lab work to fieldwork.

We deal with mostly men in this industry and, a few times, men do not want to talk/discuss with me (a woman) and take what I say seriously.

Have I experienced that [stereotyping]? Of course, I'm a woman in the IT world.

I work in tech and experience a variety of gender-related harassment as a matter of course.

Some male-dominated firms are dismissive of women-owned firms.

As a female in the military and the IT world, tech and engineering are not traditionally associated with women. My career has been proving my skills.

I believe if I were a man many potential clients would not balk at my pricing or shut down negotiations over contract disagreements.

In several meetings with a prospective client (not Travis County), their technical management repeatedly challenged me in conversations,

assuming I had little IT understanding. My team and I did prove them wrong.

It is not difficult to get a sense that, for construction work, a preference exists for a male focused company to be the contractor or sub, particularly when the room is packed with males (example, a "get to know the prime" event). When standing in line to discuss a project with a prime, the men before and after have been given more time, discussion, sincerity, and contact info for additional work than our females have received from the GC's reps at the event. It is not an isolated thing.

Another woman commented on missed opportunities because of the unwillingness to supply gender-specific accommodations.

Fieldwork opportunities [are] sometimes not offered due to difficulty creating women-only overnight accommodations.

A White woman-owned firm had not experienced gender-based barriers.

Absolutely not. I do not allow this!? I work in all male business and have never had issues...men (and all people) I know where I stand and respect me.

Some HUBs reported that being certified carried a stigma because of the assumption that minority or woman firms are less qualified.

I've been told not to mention that we are a HUB/WOSB because we will not be taken seriously.

Many large firms and clients believe HUB or DBE firms do not do good work. We are often looked down on because we have a HUB or DBE certification.

My whole time as an MBE/HUB consultant [my competency has been questioned.]

A White male-owned transgender owner had not received benefits from certification.

Hard to know exactly all of it but being LGBT owned, specifically a transgender male business owner hasn't really been helpful in landing government related contracts.

Some M/WBEs reported that they experienced pressure to reduce pricing relative to non-M/WBE firms.

They sometimes expect lower prices [because we are a HUB].

Have been offered eight hour per diem pay of \$68 as an American Indian, when typical pay for non-Indians is hourly rate of \$150 to \$600 per hour for same work, with less experience and training.

Many women photographer[s] receive assignments at a lower rate than male counterparts.

M/WBE respondents reported that they did not have access to information that would help them to compete on an equal basis.

Again, hard to know for sure. Networking often happens behind closed doors and on the golf course.

I believe it's about who you know, so although I am HUB certified and applied for business opportunities, I believe I am still not given the information needed to help me execute the opportunity.

Surety bonding access and the cost of insurance were reported to be barriers to M/WBEs taking on larger projects and obtaining work in general.

HUBs still face significant barriers to obtaining surety bonding.

Surety Bonding remains a big barrier for HUBs.

When bonding has been required, difficulty with bonding has been related to company size vs. project/bonding size.

For the bonding, it difficult for small companies who go through ups and downs to get bonding for larger projects.

Insurance we have, but the barrier on keeping it is just the high prices. Not sure if this is racial or just what it is.

I did discover for years that I was paying a lot more for insurance then I should have. I took the time to review another company that gave us a lot more for far less.

Many M/WBEs found it difficult or that they faced discriminatory barriers in obtaining capita, and banking support services. This lack of access places M/WBEs at a disadvantage and limits their ability to take on work.

In making decisions with finances with banks and other various decisions with customers [my competency is questioned].

[Faced barriers in terms of] bonding and banking capital.

Bonding & banking/capital [have been barriers].

Unable to get loans.

Hard to get banks to lend money [for] construction.

I don't know why, I have a good credit score but I just get turned down.

Until we received SBA funding, we were unable to get a loan of more than 10% of last year's revenue, which wasn't sufficient to scale our business.

We have been told that we have not shown enough profit and that we are not bankable.

We've always been denied for funding.

During the financial crash, I had never been late, and I have never bounced a check in my life. My building and credit line was called for immediate payoff ASAP. In order to get the loan initially I had to put up everything I owned and a personal guarantee.

Some M/WBE respondents reported barriers based on their firm size.

An increased level of confidence that small firms can handle sizable projects [would be beneficial].

Small business discrimination.

Vendors lack of experience with small businesses results in questioning a business' capabilities.

Yes, based on history and experience I have not had access to the same contracting opportunities that larger firms with more history in the area, larger workforces with marketing departments, and better name recognition.

I truly can't say it's due to race or gender. It's more because I don't know anyone and a lot of the opportunities is given to bigger companies.

I don't know. It appears that non-hub entities have an easier time getting in to talk to government entities--since they are larger than my firm.

Large firms have the resources to donate money to local politicians and often receive information about opportunities that are not available to others.

## **D. Conclusion**

Consistent with other evidence reported in this Study, the interviews and the survey results suggest that minorities and women continue to suffer discriminatory barriers to full and fair access to contracts and associated subcontracts in Travis

County's market area. Many minority- and woman-owned businesses reported having to contend with racist or sexist behaviors and negative perceptions about their competency. These biases negatively affected their attempts to obtain contracts and to be treated equally in performing contract work. They reported reduced business opportunities, less access to formal and informal networks, and greater difficulties in securing financial support relative to non-M/WBEs in their industries. Many indicated that they were working well below their capacity.

Anecdotal evidence may "vividly complement" statistical evidence of discrimination. Though not sufficient in and of itself, anecdotal evidence can serve as an essential tool for a governmental entity to successfully defend a HUB type program. While not definitive proof that the County needs to continue to implement race- and gender-conscious remedies for these impediments, the results of the qualitative data are the types of evidence that, especially when considered in conjunction with the numerous pieces of statistical evidence assembled, are relevant and probative of the County's evidentiary basis to consider the use of race- and gender-conscious measures to ensure a level playing field for its contracts.

## VII. RECOMMENDATIONS FOR TRAVIS COUNTY'S HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

The quantitative and qualitative data in this study provide a thorough examination of the evidence regarding the experiences of Historically Underutilized Business Enterprises (“HUBs”) and Minority- and Woman-owned Business Enterprises (“M/WBEs”)<sup>282</sup> in the County’s geographic and industry markets. As required by strict constitutional scrutiny, we analyzed evidence of the County’s utilization of M/WBEs as a percentage of all firms as measured by dollars spent, as well as M/WBEs’ experiences in obtaining contracts in the public and private sectors. We gathered statistical and anecdotal data to provide the agency with the evidence necessary to determine whether there is a strong basis in evidence for the continued use of race- and gender-conscious goals, and if so, how to narrowly tailor its HUB Program.

Travis County has implemented an aggressive and successful program for many years. Utilization of M/WBEs has exceeded availability overall. This is the outcome of setting goals, conducting outreach, and enforcing requirements. The results have been exemplary.

However, evidence beyond the County’s achievements strongly suggests these results reflect the effect of the Program. Outside of County contracts, M/WBEs face large disparities in opportunities for public sector and private sector work in the Austin area markets. The records in our Disparity Study for the Texas Department of Transportation and other Texas governments support the conclusion that the current effects of past discrimination and ongoing bias would be barriers to County work in the absence of affirmative action remedies. Texas business owners reported instances of bias and discrimination, and that they receive little work without the use of contract goals.

Based upon these results, we make the following recommendations.

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282. As with the other Chapters of this Report, we use the terms HUB and M/WBE interchangeably.

## **A. Augment Race- and Gender-Neutral Measures**

The courts require that governments use race- and gender-neutral approaches to the maximum feasible extent to address identified discrimination. This is a critical element of narrowly tailoring the Program, so that the burden on non-M/WBEs is no more than necessary to achieve the County's remedial purposes. Increased participation by M/WBEs through race-neutral measures will also reduce the need to set M/WBE contract goals. We therefore suggest the following enhancements of the County's current efforts, based on the business owner interviews and survey responses, input of agency staff, and national best practices for business development programs.

### **1. Increase Program Resources**

The most critical recommendation is to increase County staff and technical resources devoted to the Program. Most of the other suggestions, discussed below, are dependent upon enough personnel to deliver the enhancements to M/WBEs and small firms. The current staffing levels are simply insufficient to provide more activities and services to support inclusion. The County currently has six positions devoted to the program, including the staff in Procurement. By contrast, the City of Austin has 17 positions devoted to administering the M/WBE program, not including staff that conduct certifications. The current personnel have supported M/WBEs and the requirements of the Program by their strong personal commitment to inclusion and hard work, as well as the support of the Commissioners Court. However, at least eight additional staff members are needed to implement improvements such as increased outreach, expanded access to information and networking, enhanced monitoring of contractual commitments, review of bids for non-discrimination, more narrowly tailored contract goal setting, increased reporting to the Court and the public, and requiring real estate development projects to participate in the Program.

### **2. Review Bids and Proposals to Ensure Bidder Non-Discrimination and Fairly Priced Subcontractor Quotations**

The 2016 Disparity Study recommended that the County ensure non-discrimination by requiring bidders to maintain all subcontractor quotes received on larger projects. We reiterate this recommendation. However, additional staff is needed to actually make progress on this recommendation.



### 3. Create a Procurement Forecast

While the County does have a page, Contracts Search,<sup>283</sup> where potential vendors can research contracts and when the contracts expire, this is both laborious and may not fully provide information on future opportunities for County work. While not a quick or easy feature to implement and will likely require more staff resources, a page that provides information on upcoming bid opportunities<sup>284</sup> is one race- and gender-neutral measure that will assist all firms to access information. This is especially important since many business owners expressed frustration about the difficulties in accessing information about opportunities in time to gather information and form teams to respond to invitations for bids or requests for proposals.

### 4. Enhance Opportunities on Design Projects

Many minority and woman consultants reported that, in their experience, the process for awarding design contracts was not sufficiently transparent or inclusive. While an application requirement reduces the burden on agency staff, it imposes a barrier to full participation by M/WBEs.

To address these concerns and increase HUB opportunities on design projects, not only as subconsultants but also as prime consultants, we suggest the HUB and Engineering staff take the following actions:

- Open up the Prequalified List for design firms for contracts up to \$500,000 for applications at any time.
- Conduct targeted outreach when the application period opens.
- Provide technical assistance on how to apply.
- Reach out to new firms to ensure they understand how to navigate the consultant contracting process.
- Conduct targeted outreach events for larger projects to assist certified firms to network with larger consultants
- Provide a separate report to the Commissioners on these contracts to increase focus on opportunities that are well within the capabilities of HUBs and small firms.

The County should also require a proposer to explain at the time of proposal submission how it will include HUBs if it is not a certified firm. Waiting until

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283. Contracts Search ([traviscountytx.gov](https://traviscountytx.gov)).

284. See, for example, the City of Chicago's Buying Opportunities page. <https://www.chicago.gov/city/en/depts/dps/provdrs/contract/svcs/city-of-chicago-consolidated-buying-plan.html> [chicago.gov].

firms have been preliminarily chosen for award reduces the negotiating leverage of HUBs and creates the impression that diversity is not central to the evaluation process.

## **5. Continue to Focus on Reducing Barriers to M/WBE Prime Contract Awards**

The 2016 Study recommended that the County increase efforts to make prime contract awards to M/WBEs, and progress continues to be made. The County has developed contract specifications with an eye towards unbundling projects into less complex scopes and lower dollar values. It has also increased the use of Job Order Contracts, which have lower bonding, financing and experience standards on some contracts. These efforts should continue.

We again suggest reviewing surety bonding, insurance and experience requirements in general to ensure that they are no greater than necessary to protect the County's interests. These are possible barriers to contracting by small firms that have been mentioned by the courts as areas to be considered. Steps might include reducing or eliminating insurance requirements on smaller contracts and removing the cost of the surety bonds from the calculation of lowest apparent bidder on appropriate solicitations. The Procurement and HUB staff should work with other departments on this review.

## **6. Adopt a Pilot "Quick Pay" Program**

The County should consider adopting a pilot "quick pay" program, where general contractors on specified larger contracts (perhaps greater than \$5M) must submit their invoices twice a month and then pay their subcontractors within five days of every progress payment received from the County. This will help to smooth out the cash flow challenges of HUBs and small firms and make County work more attractive to these firms.

## **7. Create Department Scorecards**

A "best in class" contracting diversity program requires that all departments and County staff take ownership of diversity and inclusion. The Program cannot be seen as "Purchasing's Program". One way to ensure that all staff with contracting and procurement responsibilities focus on including HUBs is to require an annual report on each department's efforts to increase inclusion. The report should detail the participation by HUBs in the department's overall spend, disaggregated by race, gender and industry code. The report could also include outreach efforts and other steps that were taken to increase HUB participation. These reports can then be used to develop a score card for each user department.

**8. Consider Partnering with Other Agencies to Implement a Small Contractor Bonding and Financing Program**

Access to bonding and working capital are major barriers to the development and success of M/WBEs and small firms. Traditional underwriting standards have often excluded these businesses. We therefore recommend that the County explore working with other local agencies on a bonding and financing program. This approach goes beyond providing information about outside bonding resources by offering actual assistance to firms through a team of program consultants. It would not, however, function as a bonding guarantee program that places the County's credit at risk or provides direct subsidies to participants. Rather, this concept brings the commitment of a lender and a surety to finance and bond firms that have successfully completed the training and mentoring program.

**B. Continue to Implement Narrowly Tailored Race- and Gender-Conscious Measures.**

**1. Use the Study to Set the Overall, Annual Aspirational HUB Goal**

The County's program has been very successful in opening up opportunities for HUBs on its contracts. As reported in Chapter IV, utilization has been significantly higher than availability for M/WBEs overall. When we examined whether firms were concentrated within an industry or between industries on the basis of race or gender, however, a picture emerged of unequal outcomes for M/WBEs compared to non-M/WBEs.

Further, as documented in Chapter V, when examining outcomes in the wider economy, it is clear that M/WBEs do not yet enjoy full and fair access to opportunities to compete. Data from the Census Bureau's *Survey of Business Owners* indicate very large disparities between M/WBE firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. Similarly, data from the Census Bureau's *American Community Survey* ("ACS") indicate that Blacks, Hispanics and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The results of numerous small business credit surveys reveal that M/WBEs, especially Black-owned firms, suffer significant barriers to business financing. There are also

race-based barriers to the development of the human capital necessary for entrepreneurial success.

Our interviews with individual business owners and stakeholders and the results of our survey further buttress the conclusion that race and sex discrimination remain persistent barriers to equal contracting opportunities. Many minority and female owners reported that they still encounter barriers based on their race and/or gender and that without affirmative intervention to increase opportunities through contract goals, they will continue to be denied full and fair chances to compete.

In our judgment, the County's utilization of HUBs is the result of the operations of its program, not the cessation of discrimination outside of contracting affirmative action programs. Without the use of goals, the agency may become a "passive participant" in the market failure of discrimination.

We therefore recommend that the County continue to use narrowly tailored measures. These should include using the weighted availability estimates to set its overall, annual aspirational HUB goal.

## **2. Use the Study to Set HUB Contract Goals**

In addition to setting an overall, annual target, the County should use the study's detailed unweighted availability estimates as the starting point for contract specific goals. As discussed in Chapter II of this Report, an agency's constitutional responsibility is to ensure that goals are narrowly tailored to the specifics of the project. This methodology involves four steps:

- Weight the estimated dollar value of the scopes of the contract by six-digit NAICS codes, as determined during the process of creating the solicitation.
- Determine the unweighted availability of HUBs in those scopes as estimated in the study.
- Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
- Adjust the resulting percentage based on current market conditions and progress towards the annual goals.

Written procedures spelling out the steps should be drafted.

This constitutionally mandated approach may result in goals that are higher or lower than the annual goals, including no goals where there are insufficient subcontracting opportunities (as is often the case with supply contracts) or an insufficient number of available firms.

We suggest that the County broaden the reach of the Program to include setting goals for contracts expected to cost at least \$50,000. Currently, the aspirational goals are applied to contracts between \$50,000 and \$1,000,000. However, this approach likely fails the narrow tailoring test, as the overall goals are not tied to the specific scopes of work of the project. The current thresholds for contract goal setting of \$1,000,000 for all contracts except transportation contracts, where the threshold is \$1M, are very high, and there may well be subcontracting opportunities for contracts estimated at lower amounts. This will require setting narrowly tailored contract goals for all solicitations of \$50,000. As with other enhancements, this will require staff to implement this expansion.

The County should further consider providing the list of codes used to set the contract goal with the solicitation. This would provide guidance to prime firms on possible subcontracting scopes for making good faith efforts (“GFEs”), as well as increase transparency about how the program operates. GFEs could be defined as, among several other elements, an adequate solicitation of firms certified in these codes. It will be necessary to stress that firms may meet the goal using firms outside of these industries and that only soliciting firms in these identified industries does not *per se* constitute making GFEs to meet the goal.

Next, we recommend that only the HUB goal be stated in the solicitation. While specific minority and gender goals are stated on the solicitation, the overall HUB contract goal is used for evaluating responsiveness to goal requirements. This leads to confusion and creates the impression that while the documents say it is one goal, that is not what is actually meant. It is critical for Program defense that documents be straightforward and not open to subjective interpretation.

We further recommend that contract goals be reviewed when there is a change order greater than some minimum amount (*e.g.*, ten percent). This could result in an increase, a decrease or no change in the contract goal, but it will ensure the constitutionally required flexibility that is the hallmark of a narrowly tailored goal setting and implementation methodology.

We urge the County to bid some contracts without goals that it determines have significant opportunities for HUB participation, especially in light of the high participation of HUBs during the study period. These control contracts can illuminate whether certified firms are used or even solicited in the absence of goals. The development of some “unremediated markets” data, as held by the courts, will be probative of whether the Program remains needed to level the playing field for minorities and women.

### **3. Strengthen Program Administration**

While the current Program has produced admirable results, there are some possible revisions that can strengthen the County's efforts. We make the following recommendations:

- Permit HUBs to count their self-performance towards meeting the contract goal. Restricting the program to only subcontracting work is highly unusual, and limits opportunities for HUBs to grow into prime vendors. A subcontracting only program also fails to recognize that barriers to prime contracting opportunities are the most difficult for minority and women businesses to overcome. The USDOT DBE program has always permitted prime contractors to count self-performance towards meeting contract goals, and no court has suggested that this somehow fails strict constitutional scrutiny. This is also "race- neutral" participation, since it would not be the result of contract goals.
- Increase contract compliance monitoring. Commercially useful function reviews should be performed on all contracts over \$100,000. Perhaps standardize compliance reviews at 30%, 60% and 80% of project completion. Ensure that HUB program and contractual commitments are evaluated at contract closeout.
- Under the current approach to reviewing GFEs, a respondent that proposes only HUBs to fulfill all subcontracting opportunities identified in the Declaration and substantially meets the HUB goal (i.e., 50% or more of the HUB goal) is considered to have made GFEs (see Option C at Section II.E.1., of this Study). We recommend that this definition of GFE requirements be removed from the program. Bidders should either meet the contract goal or make GFEs to do so. We suggest the County dispense with this unique and needless complication and require GFEs to the entire contract value, regardless of whether non-certified firms will also be used. Either the goal is met or it is not. The current approach in effect reduces the goal based only on the fact that non-HUBs will not be used. This may reduce opportunities for HUBs on projects where more participation is possible even if non-HUB subcontractors are also utilized. Finally, subjecting all dollars to the GFEs requirement is the national best practice and embodies the USDOT DBE program regulations.<sup>285</sup>
- Revise the current requirement that GFEs are met if only three HUBs are notified of the opportunity. In our view, this is not sufficient to ensure that HUBs are aware of contracts, and several participants in the interviews reported that they found it difficult to access information

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285. 49 C.F.R. §26.51.

about County opportunities. Bidders' efforts should reflect reasonable efforts to meet the goal. We suggest the County adopt language similar to that in the DBE regulations.<sup>286</sup>

- Enhance the process for HUB inclusion on Job Order Contracts (that is, contracts that are procured with one vendor under a master agreement and then ordered per task). This should include attaching the HUB Declaration Form to the solicitation. Conduct targeted outreach to increase HUB utilization, even though there are no contract specific goals because of the unknown nature of the orders that will be needed at the time of contract solicitation and award. Further, the County should use a sample contract to set the overall goal for the purpose of award. Make it clear that it is the total overall contract amount at closeout against which utilization will be measured; the contractor need not document GFEs for every task order. The bidder should provide a list of the subcontractors it expects to use— both certified and non-certified— with the understanding that the list may change both because of the scope of the job order or the availability at the time of performance of the listed subcontractor.
- Develop standards for modifications to utilization plans to ensure that contractors abide by their commitments to listed HUBs and only make changes with the prior, written consent of the HUB staff. These standards could be modeled on the U.S. Department of Transportation DBE program, which provides detailed criteria for substituting a certified firm during contract performance.

#### **4. Expand the Program to Include Development Contracts**

Chapter 381 of the Local Government Code allows counties to provide incentives encouraging developers to build in their jurisdictions. A county may administer and develop a program to make loans and grants of public money to promote state or local economic development and to stimulate, encourage and develop business location and commercial activity in the county. A county also may develop and administer a program for entering into a tax abatement agreement. This tool allows counties to negotiate directly with developers and businesses.

Currently, the County only requires developers to submit an annual report of their HUB participation. If permitted under state law, we suggest that these projects be subject to the HUB program. While the County would not set contract goals or monitor day-to-day compliance, it could require that developers undergo training on the HUB program; purchase their own Vendor Tracking

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286. 49 C.F.R. §26.53 ("What are the good faith efforts procedures recipients follow in situations where there are contract goals?") and Appendix A.

System license and utilize it to create regular reports for the County's review; and conduct targeted and documented outreach.

## **5. Implement a Mentor-Protégé Program**

Many firms suggested the County adopt a mentor-protégé program for HUBs. We agree and suggest modeling it after the successful programs approved by the U.S. Department of Transportation. This program would provide support for M/WBEs while incentivizing the mentor to provide targeted assistance to the protégé to produce identified and achievable goals.<sup>287</sup> As also described by several interviewees, it is important that any program provide real value to both parties to the mentoring agreement, not be mere window dressing or simply devolve into feel good meetings.

A program should include:

- A description of the qualifications of the mentor, including the firm's number of years of experience as a contractor or consultant; the agreement to devote a specified number of hours per month to working with the protégé; and the qualifications of the lead individual responsible for implementing the development plan.
- A description of the qualifications of the protégé, including the firm's number of years of experience as a contractor or consultant; the agreement to devote a specified number of hours per month to working with the mentor; and the qualifications of the M/WBE owner(s).
- A written County-approved development plan, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement, a schedule for meetings and development of action plans, and the services and resources to be provided by the mentor to the protégé. The assistance provided by the mentor must be detailed and directly relevant to County work. The development targets should be quantifiable and verifiable—such as increased bonding capacity, increased sales, increased areas of work specialty or prequalification—and reflect objectives that increase the protégé's capacities and expand its business areas and expertise.
- A long term and specific commitment between the parties, *e.g.*, 12 to 36 months.
- A provision for the use of any equipment or equipment rental.

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287. See 49 C.F.R. Part 26, Appendix D, "Mentor-Protégé Guidelines".



- Extra credit for the mentor's use of the protégé to meet a contract goal (e.g., 1.25% for each dollar spent), with a limit on the total percentage that could be credited on a specific contract and on total credits available under the Plan.
- Any financial assistance by the mentor to the protégé must be subject to prior written approval by the County and must not permit the mentor to assume control of the protégé or otherwise impinge on the protégé's continued program eligibility.
- A fee schedule to cover the direct and indirect cost for services provided by the mentor for specific training and assistance to the protégé.
- A provision that the Plan may be terminated by mutual consent or by the County if the protégé no longer meets the eligibility standards for M/WBE certification; either party desires to be removed from the relationship; either party has failed or is unable to meet its obligations under the plan; the protégé is not progressing or is not likely to progress in accordance with the plan; the protégé has reached a satisfactory level of self-sufficiency to compete without the plan; or the plan or its provisions are contrary to legal requirements.
- Submission of quarterly reports by the parties indicating their progress toward each of the Plan's goals.
- Regular review by the County of compliance with the Plan and progress towards meeting its objectives. Failure to adhere to the terms of the Plan or to make satisfactory progress would be grounds for termination from the Program.

We recognize that this level of direction and oversight will require resources. Close monitoring of the program will also be critical.

## **C. Develop Performance Measures for Program Success**

Travis County should develop quantitative performance measures for HUBs and the overall success of the Program to evaluate its effectiveness in reducing the systemic barriers identified in this Report. In addition to meeting the overall, annual goal, possible benchmarks might be:

- Decreases in the number of bids or proposals, broken down by the industry and the dollar amount of the awards and the goal shortfall, where the bidder was unable to meet the goals and submitted evidence of its Good Faith Efforts to do so.

- Decreases in the number, dollar amount and the industry code of bids or proposals rejected as non-responsive for failure to make GFEs to meet the goal.
- Decreases in the number, industry and dollar amount of HUB substitutions during contract performance.
- Increases in bidding by certified firms as prime vendors.
- Increases in prime contract awards to certified firms.
- Increases in HUB bonding limits, size of jobs, profitability, complexity of work, etc.
- Increases in variety in the industries in which HUBs are awarded prime contracts and subcontracts.

## **D. Continue to Conduct Regular Program Reviews**

Travis County adopted a sunset date for the current Program, and we suggest this approach be continued. Data should be reviewed approximately every five to six years, to evaluate whether race- and gender-based barriers have been reduced such that affirmative efforts are no longer needed. If such measures continue to be necessary, the County must ensure that they remain narrowly tailored.

# APPENDIX A:

## FURTHER EXPLANATION OF THE MULTIPLE REGRESSION ANALYSIS

As explained in the report, multiple regression statistical techniques seek to explore the relationship between a set of independent variables and a dependent variable. The following equation is a way to visualize this relationship:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry & occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term;  $\beta_1$ ,  $\beta_2$  and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

The statistical technique seeks to estimate the values of the constant term and the coefficients.

In order to complete the estimation, the set of independent variables must be operationalized. For demographic variables, the estimation used race, gender and age. For industry and occupation variables, the relevant industry and occupation were utilized. For the other variables, age and education were used.

A coefficient was estimated for each independent variable. The broad idea is that a person's wage or earnings is dependent upon the person's race, gender, age, industry, occupation, and education. Since this report examined Travis County, the analysis was limited to data from Bastrop, Caldwell, Hays, Travis, and Williamson counties. The coefficient for the new variable showed the impact of being a member of that race or gender in the metropolitan area.



# APPENDIX B:

## FURTHER EXPLANATION OF THE PROBIT REGRESSION ANALYSIS

Probit regression is a special type of regression analysis. Probit regression analysis is used to explore the determinants of business formation because the question of business formation is a “yes” or “no” question: the individual does or does not form a business. Hence, the dependent variable (business formation) is a dichotomous one with a value of “one” or “zero”. This differs from the question of the impact of race and gender on wages, for instance, because wage is a continuous variable and can have any non-negative value. Since business formation is a “yes/no” issue, the fundamental issue is: how do the independent variables (race, gender, etc.) impact the probability that a particular group forms a business? Does the race or gender of a person raise or lower the probability he or she will form a business and by what degree does this probability change? The standard regression model does not examine probabilities; it examines if the level of a variable (*e.g.*, the wage) rises or falls because of race or gender and the magnitude of this change.

The basic probit regression model looks identical to the basic standard regression model:

$$DV = f(D, I, O)$$

where DV is the dependent variable; D is a set of demographic variables; I is a set of industry and occupation variables; and O is a set of other independent variables.

The estimation process takes this equation and transforms it into:

$$DV = C + (\beta_1 * D) + (\beta_2 * I) + (\beta_3 * O) + \mu$$

where C is the constant term;  $\beta_1$ ,  $\beta_2$ , and  $\beta_3$  are coefficients, and  $\mu$  is the random error term.

As discussed above, the dependent variable in the standard regression model is continuous and can take on many values while in the probit model, the dependent variable is dichotomous and can take on only two values: zero or one. The two models also differ in the interpretation of the independent variables' coefficients; in the standard model, the interpretation is fairly straight-

forward: the unit change in the independent variable impacts the dependent variable by the amount of the coefficient.<sup>288</sup> However, in the probit model, because the model is examining changes in probabilities, the initial coefficients cannot be interpreted this way. One additional computation step of the initial coefficient must be undertaken in order to yield a result that indicates how the change in the independent variable affects the probability of an event (*e.g.*, business formation) occurring. For instance, with the question of the impact of gender on business formation, if the independent variable was WOMAN (with a value of 0 if the individual was male and 1 if the individual was female) and the additional computation chance of the coefficient of WOMAN yielded a value of -0.12, we would interpret this to mean that women have a 12 percent lower probability of forming a business compared to men.

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288. The exact interpretation depends upon the functional form of the model.

# APPENDIX C:

## SIGNIFICANCE LEVELS

Many tables in this Report contain asterisks indicating that a number has statistical significance at 0.001, 0.01, or 0.05 levels (sometimes, this is presented as 99.9 percent; 99 percent and 95 percent, respectively) and the body of the report repeats these descriptions. While the use of the term seems important, it is not self-evident what the term means. This Appendix provides a general explanation of significance levels.

This Report seeks to address the question of whether or not non-Whites and White women received disparate treatment in the economy relative to White males. From a statistical viewpoint, this primary question has two sub-questions:

- What is the relationship between the independent variable and the dependent variable?
- What is the probability that the relationship between the independent variable and the dependent variable is equal to zero?

For example, an important question facing Travis County as it explores whether each racial and ethnic group and White women continue to experience discrimination in its markets is do non-Whites and White women receive lower wages than White men? As discussed in Appendix A, one way to uncover the relationship between the dependent variable (*e.g.*, wages) and the independent variable (*e.g.*, non-Whites) is through multiple regression analysis. An example helps to explain this concept.

Let us say, for example, that this analysis determines that non-Whites receive wages that are 35 percent less than White men after controlling for other factors, such as education and industry, which might account for the differences in wages. However, this finding is only an estimate of the relationship between the independent variable (*e.g.*, non-Whites) and the dependent variable (*e.g.*, wages) – the first sub-question. It is still important to determine how accurate the estimation is. In other words, what is the probability that the estimated relationship is equal to zero – the second sub-question.

To resolve the second sub-question, statistical hypothesis tests are utilized. Hypothesis testing assumes that there is no relationship between belonging to a particular demographic group and the level of economic utilization relative to White men (*e.g.*, non-Whites earn identical wages compared to White men

or non-Whites earn 0 percent less than White men). This sometimes is called the null hypothesis. We then calculate a confidence interval to find the probability that the observed relationship (*e.g.*, -35 percent) is between 0 and minus that confidence interval.<sup>289</sup> The confidence interval will vary depending upon the level of confidence (statistical significance) we wish to have in our conclusion. When a number is statistically significant at the 0.001 level, this indicates that we can be 99.9 percent certain that the number in question (in this example, -35 percent) lies outside of the confidence interval. When a number is statistically significant at the 0.01 level, this indicates that we can be 99.0 percent certain that the number in question lies outside of the confidence interval. When a number is statistically significant at the 0.05 level, this indicates that we can be 95.0 percent certain that the number in question lies outside of the confidence interval.

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289. Because 0 can only be greater than -35 percent, we only speak of “minus the confidence level”. This is a one-tailed hypothesis test. If, in another example, the observed relationship could be above or below the hypothesized value, then we would say “plus or minus the confidence level” and this would be a two-tailed test.



# APPENDIX D:

## UNWEIGHTED AND WEIGHTED AVAILABILITY

Central to the analysis, under strict constitutional scrutiny, of an agency's contracting activity is understanding what firms could have received contracts. Availability has two components: unweighted availability and weighted availability. Below we define these two terms; why we make the distinction; and how to convert unweighted availability into weighted availability.

### Defining Unweighted and Weighted Availability

*Unweighted availability* measures a group's share of all firms that could receive a contract or subcontract. If 100 firms could receive a contract and 15 of these firms are minority-owned, then MBE unweighted availability is 15 percent (15/100). *Weighted availability* converts the unweighted availability through the use of a weighting factor: the share of total agency spending in a particular NAICS code. If total agency spending is \$1,000,000 and NAICS Code AAAAAA captures \$100,000 of the total spending, then the weighting factor for NAICS code AAAAAA is 10 percent ( $\$100,000/\$1,000,000$ ).

### Why Weight the Unweighted Availability

It is important to understand *why* weighted availability should be calculated. A disparity study examines the overall contracting activity of an agency by looking at the firms that *received* contracts and the firms that *could have received* contracts. A proper analysis does not allow activity in a NAICS code that is not important an agency's overall spending behavior to have a disproportionate impact on the analysis. In other words, the availability of a certain group in a specific NAICS code in which the agency spends few of its dollars should have less importance to the analysis than the availability of a certain group in another NAICS code where the agency spends a large share of its dollars.

To account for these differences, the availability in each NAICS code is weighted by the agency's spending in the code. The calculation of the weighted availability compares the firms that received contracts (utilization) and the firms that could receive contracts (availability). Utilization is a group's share of total spending by an agency; this metric is measure in dollars, *i.e.*,

MBEs received 8 percent of all dollars spent by the agency. Since utilization is measured in dollars, availability must be measured in dollars to permit an “apples-to-apples” comparison.

## How to Calculate the Weighted Availability

Three steps are involved in converting unweighted availability into weighted availability:

- Determine the unweighted availability
- Determine the weights for each NAICS code
- Apply the weights to the unweighted availability to calculate weighted availability

The following is a hypothetical calculation.

Table D-1 contains data on unweighted availability measured by the number of firms:

**Table A**

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	10	20	20	5	15	400	470
BBBBBB	20	15	15	4	16	410	480
CCCCCC	10	10	18	3	17	420	478
<b>TOTAL</b>	<b>40</b>	<b>45</b>	<b>53</b>	<b>12</b>	<b>48</b>	<b>1230</b>	<b>1428</b>

Unweighted availability measured as the share of firms requires us to divide the number of firms in each group by the total number of firms (the last column in Table D-1). For example, the Black share of total firms in NAICS code AAAAAA is 2.1 percent (10/470). Table D-2 presents the unweighted availability measure as a group’s share of all firms.

**Table B**

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
AAAAAA	2.1%	4.3%	4.3%	1.1%	3.2%	85.1%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE	Total
BBBBBB	4.2%	3.1%	3.1%	0.8%	3.3%	85.4%	100.0%
CCCCC	2.1%	2.1%	3.8%	0.6%	3.6%	87.9%	100.0%
<b>TOTAL</b>	<b>2.8%</b>	<b>3.2%</b>	<b>3.7%</b>	<b>0.8%</b>	<b>3.4%</b>	<b>86.1%</b>	<b>100.0%</b>

Table D-3 presents data on the agency's spending in each NAICS code:

**Table C**

NAICS	Total Dollars	Share
AAAAAA	\$1,000.00	22.2%
BBBBBB	\$1,500.00	33.3%
CCCCC	\$2,000.00	44.4%
<b>TOTAL</b>	<b>\$4,500.00</b>	<b>100.0%</b>

Each NAICS code's share of total agency spending (the last column in Table D-3) is the weight from each NAICS code that will be used in calculating the weighted availability. To calculate the overall weighted availability for each group, we first derive the every NAICS code component of a group's overall weighted availability. This is done by multiplying the NAICS code weight by the particular group's unweighted availability in that NAICS code. For instance, to determine NAICS code AAAAAA's component of the overall Black weighted availability, we would multiply 22.2 percent (the NAICS code weight) by 2.1 percent (the Black unweighted availability in NAICS code AAAAAA). The resulting number is 0.005 and this number is found in Table D-4 under the cell which presents NAICS code AAAAAA's share of the Black weighted availability. The procedure is repeated for each group in each NAICS code. The calculation is completed by adding up each NAICS component for a particular group to calculate that group's overall weighted availability. Table D-4 presents this information:

**Table D**

NAICS	Black	Hispanic	Asian	Native American	White Women	Non-M/W/DBE
AAAAAA	0.005	0.009	0.009	0.002	0.007	0.189
BBBBBB	0.014	0.010	0.010	0.003	0.011	0.285
CCCCCC	0.009	0.009	0.017	0.003	0.016	0.391
<b>TOTAL</b>	<b>0.028</b>	<b>0.029</b>	<b>0.037</b>	<b>0.008</b>	<b>0.034</b>	<b>0.864</b>

To determine the overall *weighted availability*, the last row of Table D-4 is converted into a percentage (*e.g.*, for the Black weighted availability:  $0.028 * 100 = 2.8$  percent). Table D-5 presents these results.

**Table E**

Black	Hispanic	Asian	Native American	White Women	Non-MWBE	Total
2.8%	2.9%	3.7%	0.8%	3.4%	86.4%	100.0%

# ~~APPENDIX E:~~

## ~~QUALITATIVE EVIDENCE FROM~~

### ~~TEXAS DISPARITY STUDIES~~

In addition to the anecdotal data collected for this study and provided in the Qualitative chapter of this report, Colette Holt & Associates has conducted several studies in Texas over the last few years that shed light on the experiences of minority- and women-owned firms in the Texas marketplace.

This summary of anecdotal reports provides an overview of the following Disparity Studies: the Dallas Fort Worth International Airport 2019 (“DFW”); Texas Department of Transportation 2019 (“TxDOT”), Dallas County 2015 (“Dallas County”), Parkland Health and Hospital System 2015 (“PHHS”), Harris County 2020 (“Harris County”), the City of Arlington (“Arlington”) and the City of Fort Worth (“Fort Worth”).

#### **1. Discriminatory Attitudes and Negative Perceptions of Competency and Professionalism**

Many minority and women owners reported being stigmatized by their race and/or gender. Subtle and overt stereotyping and race and gender discrimination were commonplace. Respondents reported that White men often evince negative attitudes concerning their competency, skill and professionalism.

Biases about the capabilities of minority and women business owners impact all aspects of their attempts to obtain contracts and to be treated equally in performing contract work. The prevailing viewpoint is that M/WBEs and smaller firms are less qualified and capable.

**One of the biggest general contractors in this part of Texas got up and**

says, "I don't want to do business with [minorities].... The only reason why I'm here is because I got a contract and the state is paying for it, or else I wouldn't be doing business with you. (Harris County, p.95)

Stigma sometimes can come from leading your marketing with M/WBE status, and that's a quick way to [not get work]. (DFW, page 158)

Sometimes, I choose not to present myself as a minority contractor.... Obviously, when people meet me, [being an MBE] they assume certain things. As they get to know me and understand that I can speak construction, that I'm bilingual, that I speak engineering, then I get the comment, "Oh, you're different." Or, "You're educated."... I do think that there is a stigma" [to being an MBE]. (DFW, page 158)

I try not to use my accent. And treatment is completely different, completely different [if they think I am White]. (TxDOT, page 161)

[Agency staff and prime vendors] are looking down at you because you are a woman. Because you're a woman, you probably didn't know IT. (Dallas County, page 104) (PHHS, page 107)

There's still this stigma. "Well, I guess, you know, we'll see what the little girls are doing over there." (DFW, page 158)

There are many women owned businesses who are trying today to survive in the male-owned, if you want to say good old boy, Texas network. Many of us. And it does keep us down because of the perception of what the woman knows in math and science as you negotiate with engineers. (Dallas County, page 102)

When a White firm commits an offense, something goes wrong, they say run his ass off. Not the firm, but the architect or that manager who did a poor job. If it's an African-American firm or Hispanic firm, run the company off. (PHHS, page 108) (Dallas County, page 103)

People of color do not get the same credit even if their financials and credit scores are the same.... [A White man has] got a little bit more credit than you did. And then there was a slowdown in paid invoices, [he's] a big GC and he floats it because he's got a little more credit. And then people turn around, "Hey, that guy's a good business. Joe Man Black over here, Hispanic, he doesn't know how to manage his business." All he did was access his credit line. And if he would've had his credit line, he could do it, too. It's like he ain't stupid. If he had a credit line, he'd access it when he needs it.... So then, [non-M/WBEs] look like they're better business people, not because they're better business people, but because people are carrying them. (Fort Worth, page 137)

There's definitely on fees, an expectation, that if you are woman-owned or minority-owned firm, that you're going to do the work for less. Same work, for less. (Harris County, page 95)

Many women reported unfair treatment or sexual harassment in the business world.

Sometimes I get statements like, "Are you sure you can do the work?" (TxDOT, page 162)

I've dealt with [TxDOT staff] that just thought I was dumb as dirt because I'm a woman, but this was a woman. (TxDOT, page 163)

I still do find the initial contact with specifically, a general contractor, there is somewhat that attitude of you're a woman, let me tell you how to do this. (TxDOT, page 162)

You get a lot of that. You're a woman, pat you on the head and say it's nice that you came today. Then, all the sudden, they'll be over there doing their thing and you sit there and hear what they're saying. You're like, that's not gonna be to code buddy and good luck with that. They look at you like, how do you know that? This is my job to know those things (TxDOT, page 162)

I have offered to go out and market more for the company and... some guys that were sitting in the back, they said, "Well, we really need somebody very young and pretty and dresses very nice to go out and market, 'cause they get the attention." "Excuse me?" I think I can do a good job marketing, but I...don't meet those qualifications. (TxDOT, page 163)

I've had dinner encounters ... I've had a guy grab me at one of those.... I definitely do make it a point to not ride with certain people that I don't feel comfortable with. (DFW, page 158)

## **2. Access to Formal and Informal Business and Professional Networks**

Both minority and women respondents reported difficulty in accessing networks and fostering relationships necessary for professional success and viability. This difficulty extended to agency staff; respondents were unable to gain access to and communicate with key agency decisionmakers. Business owners frequently stated that Texas is a "good old boy" state (TxDOT, page 161; Dallas County, page 102; Fort Worth, page 134) and that it is difficult for new firms to

gain entry into a predominantly White and male-dominated industry. (DFW, page 158).

The transportation industry as a whole is dominated by the civil engineers, which typically the folks graduating in civil engineering are white men. You have a very low proportion of women and minorities with those degrees. Inherently, then in the workplace, you're seeing very low amounts of diversity. Same things in environmental services. You don't get a lot of women who are wildlife biologists. Someone with that type of experience typically has been hunting and fishing with his father and his grandpa their entire lives and they have a good old boys club. They go drinking, they go fishing, they go playing golf. (TxDOT, page 162)

You call and call and call [prime vendors] and you sort of feel like you're just bugging them. But they never call back. They never do anything. So, just seems like they're just used to doing business with the same companies and that's who they choose to do business with. (Harris County, p. 100)

They still see women as a support system. They do not see us as business people. We are stepping out, and we are, women are coming on. Men, I hate to put it, y'all better get ready because the women are in the labor force, they're coming hard, and they're coming fast. (Fort Worth, page 136)

You're not in the frat. You didn't get the letter, you know? You didn't get the call. But whatever you need to do to get in, you need to figure it out. (Harris County, page 100)

[Texas is] a good old boy state. It is a fact of life whether you're a woman, small business, whatever. Ladies, the only way we get a chance is we have to legally stand up and demand that we get a fair trial, that we be put on a level playing field by having rules and regulations.... [Women] are always behind. We will always be behind in this state. (Dallas County, page 101)

We are always at a disadvantage because we are not in a situation where we can build these relationships. Going to the country club here and having lunch with the mayor and with all of the CEOs of the companies around here. So, the playing field is not level, and it is discriminatory because we're not in a position to build those relationships. (Arlington, page 143).



I've been raised in Fort Worth my whole life and so it's still a very much a good old boys club here in Fort Worth. I spend 90 percent of my time in Dallas. And I live in Fort Worth. (Fort Worth, page 134)

I'm a lifelong Fort Worth resident and taxpayer and it's very disheartening that the City of Dallas has actually been a lot easier as a small minority business. There are certain aspects of the good old boys' club [you see] attending some of the pre-bids. You do see a lot of kind of favoritism and partiality to the contractors that are there and some of the City officials. (Fort Worth, page 134)

In presenting the various options and moving forward from concept into detail design, sitting around a room, and except for maybe an architect, I was always the only woman at the table. It's an expertise that I've carried for many years, and literally, repeated to the owners of a government entity, would present the case and why this is the recommendation to move forward. And it would be silence in the room. And then, this junior, who was not even a licensed P[rofessional] E[ngineer] yet, working underneath of me, who helped me put the slides together, and did some of the analysis under my leadership, would – they'd ask a couple of questions and this young man would answer the questions based on the slides and flipping back and forth. And then all of a sudden, the recommendation was accepted because this young man, who was my employee, was giving the answer instead of me. (Harris County, page 96)

There are many women owned businesses who are trying today to survive in the male-owned, if you want to say good old boy, Texas network. Many of us. An, it does keep us down because of the perception of what the woman knows in math and science, as you negotiate with engineers. (Dallas County, page 102)

My industry it is extremely male dominant.... They say, " Oh, there's a girl, there's a woman. What is she here for? Who does she work for?... That's [name]. Oh, she owns her own company. She's a little bitty company. She's nothing to worry about." Well, I'm going to be silent and deadly and they're going to watch because I'm coming. (Fort Worth, page 135)

The County and the hospital ... do tell you about the opportunities. The problem is you can't get into the inner circle [of agency decision makers]. (Dallas County, page 102)

[There is an] inability to get in front of the key decision makers [at the agencies].... I reached out to the executive assistant to the C[hief] I[nformation] O[fficer] and no one has responded at all. (PHHS, page 107)

### **3. Obtaining Work on an Equal Basis**

Respondents reported that institutional and discriminatory barriers continue to exist in the Texas marketplace. They were in almost unanimous agreement that contract goals remain necessary to level the playing field and equalize opportunities. Race- and gender-neutral approaches alone are viewed as inadequate and unlikely to ensure a level playing field.

If it's not a project that has a goal, they're not bringing you to the table. (Dallas County, page 103)

There's no real aggressive movement on [the City's] part to recruit and require these plans to hire African-Americans. (Arlington, page 144).

There is an entrenched bias in favor of the big company. They'll have the political connections, all that stuff....They don't want to risk anything. They've got the good old boys, they got the whole comfy thing. (Arlington, pages 144-145).

Unless there's goals in the project, there is no business for small business. And even then, they try to skirt around it. And they'll use my credentials to actually go for it and then excuse me. (Dallas County, page 103)

I have never had a contract with a general contractor in 36 years that's private. Everything is government, and if the government didn't say use a minority, they wouldn't do it. (Harris County, page 97)

Prime vendors see the goal as the ceiling, not as the floor. (Dallas County, page 103)

If you just looking at goals, goals in itself, without enforcements, it's not effective. (Harris County, page 101)

If it wasn't for that requirement, that MWB requirement, most of the businesses would probably have a very difficult time staying in business and my business, probably 80 percent of it [comes] just from these types of governmental projects that come along and it's no way that these primes would work with

us ... on projects that did not have an MWB requirement. (Fort Worth, page 137)

If the program went away, what would happen? You would lose small businesses. One, if you don't have relationships, people do business with who they know. If we don't have a program that says that there has to be utilization, participation levels, whatever that is, DBE goals MBE goals, they won't use them. (Fort Worth, page 137)

Part of the problem is accountability... The State [of Texas] has told me, with regard to submitting bids for the Texas HUB requirement, that I need to go back to the contractor, but the contractor is the problem.... The government doesn't hold the contractor accountable. (Harris County, page 102)

The [City] work stopped as a result [of dropping Hispanic firms from the program]. It was not going to be helpful to [the prime proposer] to bring on my firm, because they wouldn't get any points in the grading of the proposals. So, therefore, I have not been able to do any work at all since. (Fort Worth, page 138)

If [prime vendors] think they can get away with it, without having goals, then they're going to self-perform or they're going to use the folks that they have relationships with. And those folks don't necessarily look like us. (Dallas County, page 103)

Until those [business relationships] are equal, you're going to have to keep on forcing numbers. And as quick as you force a number, they're going to come up with something to circumvent that number. (Dallas County, page 104)

[Prime contractors] are like, why do I need you? Why do I need to give you any money? It's not required of me to do it. So, you may have the greatest relationship with them in the world but those larger firms, if they don't need to check the box so to speak, they're not going to reach out and say, hey, I want to help grow you more because in their mind I just helped you on this job get this much money, you should be happy and let me go do what I need to do. (Dallas County, page 103)

Minority and female entrepreneurs were also concerned about the inability to get work due to longstanding relationships that predate contracting affirmative action programs.

[Larger white male-owned firms are] going to go and use the same company [with which they usually do business]. (PHHS, page 106)

[People] tend to do business with who they know and who they like, and they really don't care that they're supposed to [meet a goal]. (Dallas County, page 103)

And if you're not a DBE or HUB or SBE, you're not going to be considered for any work as a consultant for TxDOT because they're going to use these legacy firms for most of their work on the consulting side. (TxDOT study, page 164)

There's this systemic nature of doing business with people you know. And we all like to do business with people we know. We know that they'll come through. They'll be on time. They'll be under budget.... [But] the systemic aspect of familiarity for others sometimes breeds contempt for the person trying to get in the door. (Fort Worth, page 133)

Respondents also maintained that prime contractors are not comfortable with minorities taking larger roles. They indicated that even M/WBEs who had accessed large public contracts through M/WBE programs did not translate into public sector work.

Do we really want to play this game and how much headache and how much headache do we want to deal with?... We employ 75 employees and I've had minorities grow through our organization. But, the challenge that I have is now that we're able to bond single projects up to 15, 18 million dollars, I'm getting a bigger pushback.... When we can sit down and start talking business and how we're going to staff the job, going to put my bonding up, what's the duration and the schedule? [The large general contractors are] doing this, no, no, no [shaking head]. (Dallas County, page 104)

You get in a niche of being a DBE and you're automatically a sub.... We've had a lot of success in the DBE market and I'm not going to downplay that, but as a prime, we don't get a lot. We end up getting a smaller piece so you can do the hydraulics, or you can do the survey but the true design work for plan and profile on a street or something like that where we can actually show expertise in engineering, we're not given that piece of the pie. (Arlington, page 145).

[A general contractor, which this MBE had worked on major project jobs, when approached about a private sector project, responded] there's no MWBE [goal] on this: I said, wait a minute. We just worked together for five years, you know me. Yes, but there's not MWBE goals. I said, you mean to tell me I can't do [scope]? It's right across the street from my headquarters. Well, there's no MWBE goals. So, he's one of the good guys. (PHHS, page 109)

Respondents also suggested approaches to increasing M/WBE opportunities and capacities.

Come out with a mentoring program that's goal-oriented and visible. (PHHS, page 110)

A good mentor helps you with a lot of things that have nothing to do with that specific project but with your business. Helps you with your safety plan and quality control plans (Dallas County, page 105)

My recommendation is that they start to do lunch and learn where you get to meet with that department for hours specific to your line of business and now you're able to have a true one-on-one conversation, or even in a group setting of their size where we can ask specific questions to understand how to respond to these RFQs, RFPs better, because as it stands right now, it's the generic and generic gets you nowhere because you don't know what a person expects. And we all have a concept of how we work, but if that's not what the person's looking for, we miss every time. (Arlington, page 146).

We've had a mentorship with [firm name] which has helped us immensely. Because I don't think we would have been able to walk through the doors or bid on the things that we've bid on or have the opportunity had we not had that mentorship. Because they had forged a path in places where I hadn't seen before. And I work in a very male dominated business in [specialty trade]. It's predominantly men. And there is some stigma with that. There are competency issues when you show up at a meeting and you're a woman and you're representing the [specialty trade] company. So, I'm really thankful for the mentorship program because I think it's just something that helps open doors. (PHHS, page 110)

I'm hearing a lot of positive feedback on mentor-protégé [initiatives]. Because you write a really good mentor-protégé

agreement and you have a great mentor, you can really learn a lot. (Dallas County, page 105)

Houston Community College has a lot of money that they have to put programs together. And they said if we will just call them and tell them what program we want, and we can get, say, 10 to 15 people in there, they'll design the program. So, you could put a mentoring program together for anybody. (Harris County, page 103)

I have some experience with J[oint] V[entures] and mentor-protégé relationships and they work but it depends on A, who you're partnering with. It's just like with anything. A JV is like a marriage. (Dallas County, page 105)

Our challenge [with acting as joint venture partner with a majority-owned firm] that we have when we're sitting at the table [is] we're really not in a decision-making position [with the majority-owned partner]. (Dallas County, page 105)

There should be contracts from which] the big boys should be completely excluded. (Dallas County, page 106)

I'm a big fan of being a participant in mentor-protégé programs because you learn how to stay in business. (Harris County, page 103)

If the County were to follow any program on the civil side, it would be the State as opposed to the City. I think the State has a lot better program. They have lower goals, but they use commercially useful function. The City has no commercially useful function. They say they do, but they really don't. There's a lot of pass throughs because their goals are so high. A lot of pass throughs are used every day to meet the goals and to me that's not the purpose of what we're doing. (Harris County, page 106)